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THE

LAW AND PRACTICE

OF

BANKRUPTCY IN IRELAND:

COMPREHENDING

ALL STATUTES, RULES, AND ORDERS,

NOW IN FORCE;

With Forms, and Directions for use.

THE SECTIONS OF 12 & 13 VICT., c. 107, AND 6 WM. 4, c. 14, COLLATED WITH THE CORRESPONDING SECTIONS OF ENGLISH ACTS, IN A MARGINAL COLUMN CONCURRENT, SHEWING THE VERBAL AND OTHER DIFFERENCES;

WITH

TABULAR VIEWS OF THE ACTS REFERRING TO ENGLAND AND IRELAND, FROM 6 GEO. 4, c. 16, TO THE CONSOLIDATION ACT, 1849, INCLUSIVE;

AND A

Complete Index.

BY EDWARD CLEMENTS, Esq.,
BARRISTER-AT-LAW.

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BIBLIOTHECA·BODLEIANA

TO THE

RIGHT HON. MAZIERE BRADY,

LORD HIGH CHANCELLOR OF IRELAND,

This Work is,

WITH A GRATEFUL SENSE OF THE FAVOUR

OF HIS LORDSHIP'S PERMISSION,

AND A SINCERE ESTEEM

FOR HIS PUBLIC VIRTUE,

AND PRIVATE WORTH,

Dedicated

BY

THE AUTHOR.

PREFACE.

The Bankruptcy cases in the English Reports are sufficiently in point, and numerous enough for our wants: but there always existed great difficulty in endeavouring to apply them; and to lessen that difficulty, is the object of the following work.

On comparing the Bankrupt code of Ireland with that hitherto or at present in use in England, there will be found very few provisions of any importance in one kingdom which have not been, at some period, in force in the other; and on reviewing the decisions had upon such of those sections as from their obscurity of phrase, or other causes, became subjects of discussion in Westminster Hall, it will be found that a great portion of them can be made available in the interpretation of our own statutes.

These considerations led to the present compilation. It was begun at first with no other design than that of encountering what at one time seemed a work of labour, but which afterwards proved the lightest portion of the task,—that of gathering from the English statutes those passages which bore more immediately upon the recent Act, 12 & 13 Vic., c. 107, and then laying the sections side by side in columns for more easy comparison, when naturally the marginal or differential column suggested itself. In completing this process, it sometimes became necessary to make a remark at foot of a section, whereby the reader would be assisted in referring to authorities.

It then became obviously necessary to follow up the pursuit, by adopting a like course with the leading Bankrupt Act, 6 W. 4, c. 14, and giving a like detail of the resemblances or differences occurring between its clauses and the statutes in operation in England when that Act had passed. Short references were placed also at foot of its sections, so as to save the trouble and uncertainty of searching out those clauses in other Acts, particularly in the recent Act of 12 & 13 V., governing, superseding, or repealing their provisions.

In order to render the work more useful as a book of practical reference, the plan in familiar use as laid down by Archbold, Deacon and others, has been adopted, preserving those cases and decisions which were applicable to the Statute Law of Ireland. By these means it is expected that the necessity of referring to books of practice grounded upon statutes not in operation here, and intended for Courts wholly different from ours, will in future be obviated.

The only deviation of importance from the course usually laid down in the books of practice, will be found at p. 39, where the great increase in the number of Acts deemed "Acts of Bankruptcy," suggested the propriety of Classification, which it is hoped will be satisfactory to the Profession. The number of persons liable to Bankruptcy, being by the recent Act considerably extended, suggested also the collection of all under one Alphabetical List, and not two, as heretofore, see p. 17, *et seq.*

The Tabular views will be found of great practical use. They are formed on the model given by the late lamented Mr. O'Donoghue, whose great industry and still greater accuracy prepared the way for all subsequent writers on the subject. Advantage has been likewise taken of Mr. Darley's very ample notes on 6 W. 4, c. 14, in his edition of the statutes, 1836. In forming the Tabular views, it was thought better to include the sections of the English Consolidation Act, 1849; that being the only Bankrupt Act, with some trifling exceptions, to which all future decisions in England must be directed.

These Tables will be found an improvement on Mr. O'Donoghue's—(*inventis facile addere*)—by containing a triple reference, and affixing the page of the work to each section; so that the reader can at once refer, without consulting any other work, to the very words of the required section, whether that section be in the English or Irish Acts.

In referring to a corresponding section, the date of the commencement of its Act is given, in order to facilitate searches through the cases. If the section be repealed, the repealing Act is named, and also the time from whence the repeal took place; and if, as often occurs in the case of the Consolidation Act, the section or its substance be renewed, the number of the re-enacting section is given likewise; so that future decisions thereon may be made applicable in solution of difficulties occurring in the Irish Acts.

In some few instances a *quere* has been affixed to the word repealed, thus—*rep.* (?), as with 2 & 3 W. 4, c. 114, Eng., p. 268, a doubt existing as to the effect of the revival of that statute, by its being recited in the body of the English Consolidation Act, whilst its schedule professed to repeal it. This view has been since confirmed by Lord Brougham, in a paper of observations accompanying a new Consolidation Bill for England, laid upon the table of the Upper House, dated 31st of January, 1850 (2 *a*). The defects in that statute are, however, capable of easy amendment by a short Act.

Reference should always be had to English decisions upon the subject of this work, as Bankrupt Law in Ireland is in a very subordinate condition compared with that of England, and wisdom would suggest the adoption of the mature and tried experience of others, although at the sacrifice of originality, real or supposed.

To specify more minutely the entire order of the work in this place would be superfluous; as it is hoped a casual glance at its pages will at once exhibit its nature with sufficient clearness; failing which, no efforts in a preface could avail.

Of the statutes, the most recent is, for obvious reasons, placed first, and next the hitherto leading Bankrupt Act, 6 W. 4, c. 14. After which, the remainder of the statutes will be found chronologically arranged.

The Practice will be found greatly assisted by chapter 8, p. 77, wherein is given a short narrative unencumbered by details, of the Jurisdiction in Bankruptcy in England, with a concise description of its different Courts and powers; which, to those acquainted only with the simple structure of our Irish Bankruptcy Court, often appears embarrassing, and leads to confusion, simply through want of a short explanation.

At foot of the Index is a short Table giving several sections of 6 W. 4, c. 14, superseded, or repealed, or governed by those of 12 & 13 V., c. 107. It was, in truth, an afterthought, suggested during the compilation of the Index itself, as its position testifies; and, although not as extensive as it might be, will be found useful in relieving the pain and uncertainty of search.

The greater part of the Text was finished and printed off before the case *in re Cramptons* came before the Court, which will account for the absence of any notice thereof at foot of section 4 of 12 & 13 Vic., c. 107, page 83, where it naturally would have been noticed. The case was this:—After Commission issued, and before adjudication, charge was made by the Petitioning Creditor upon two separate affidavits (copies whereof are at p. 358) bringing the Bankrupt under that section. A warrant (which see at p. 359) was issued by the Commissioner, whereupon he was arrested and committed to prison. Forthwith upon being "adjudged Bankrupt under such Commission," he applied for a writ of *habeas corpus*, which, after full argument and consideration upon adjournment, was granted by Mr. Justice MOORE, whereupon the Bankrupt was enlarged.

In the notes at foot of that and the following section this case will be found to have been anticipated, together with others which must inevitably arise when fit opportunities occur. No credit is claimed for these anticipations; the result being too palpable to have escaped the commonest observer, as long as the original section and copy were placed side by side. On reference it will be seen that an attempt was made, by inserting a clause not in the original, to convert it to a different use from that which the framers of the corresponding section designed.

The Commissioner in England cannot so commit, being restricted by 1 & 2 W. 4, c. 56, s. 7, Eng., as set forth in p. 84, *n.*, and the Legislature, in its endeavour to bestow larger powers on the Commissioners here, was devoid of due circumspection. The introduced passage appears in Italic in the Text, in accordance with the design of this work, and it affords a happy illustration of the value of the plan laid down, that at one single view the defect in the enactment should appear evident to the humblest capacity.

E. C.

Queen's Inn Chambers (Lower),
3, *Henrietta-street, Dublin,*
March 1, 1850.

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EXPLANATION OF ABBREVIATIONS

IN THE REFERENCES.

ABBREVIATIONS.	REPORTERS.
Adol. & E.	Adolphus & Ellis.
Atk.	Atkyns.
Arch. or *Arch. B. L.*	Archbold on the Law and Practice in Bankruptcy (10th Ed., 1844).
Ball & B.	Ball and Beatty.
B. & A.	Barnewall & Alderson.
B. & Adol.	Barnewall & Adolphus.
B. & C.	Barnewall & Cresswell.
Bea.	Beavan.
Bing.	Bingham.
Bing. N. C.	Bingham's New Cases.
B. & P.	Bosanquet & Puller.
B. & B.	Broderip & Bingham.
Bl. Com.	Blackstone's Commentaries.
Bro.	Browne.
Cam.	Campbell.
Carr. & M.	Carrington & Marshall.
Car. & P.	Carrington & Payne.
Ch. Crim. L.	Chitty's Criminal Law.
Chr.	Christian's Bankrupt Law
Ch. Ca.	Cases in Chancery.
Cook.	Cooke's Bankrupt Law, 8th Ed.
Com. Dig.	Comyn's Digest.
Coop.	George Cooper.
Cowp.	Cowper, B. R.
C. & Ph.	Craig & Phillips.
Cress.	Cresswell s Reports in Insolvent Debtors Court.
C. & J.	Crompton & Jervis.
C. & M.	Crompton & Meeson.
C., M., & R.	Crompton, Meeson, and Roscoe.
Dea. & C.	Deacon & Chitty.
Dea.	Deacon.
De. G. or *De G. B. L.*	Deacon's Law & Practice in Bankruptcy, by De Gex (2nd Ed., 1847.)
Doug.	Douglas.
D. & Ryl.	Dowling & Ryland.
Dow.	Dowling's Practice Reports.
Dr. & W.	Drury & Warren.
Esp.	Espinasse.
Gab. Crim. L.	Gabbett's Criminal Law, 1848.
G. & D.	Gale & Davison.
Gl. & J.	Glyn & Jameson.
H. Bl.	Henry Blackstone.
Ir. Eq. R.	Irish Equity Reports.
Ir. J.	Irish Jurist.
Ir. L. R.	Irish Law Reports.

ABBREVIATIONS.	REPORTERS.
Jac.	Jacob.
Jac. & W.	Jacob & Walker.
Jur.	The Jurist.
Mad.	Maddock.
Man. & R.	Manning & Ryland.
M. & G.	Manning & Grainger.
M. & S.	Maule and Selwyn.
M'Cl.	M'Cleland.
Mon.	Montagu.
M. & A.	Montagu & Ayrton.
M. & B.	Montagu & Bligh.
M. & C.	Montagu & Chitty.
M., D., & D.	Montagu, Deacon, & De Gex.
M. & M'A.	Montagu & M'Arthur.
Mood. & M.	Moody & Malkyn.
Mood. & R.	Moody & Robinson.
Moor.	John B. Moore's Reports in C. B.
M. & P.	Moore & Payne.
M. & Sc.	Moore & Scott.
M. & K.	Mylne & Keene.
M. & C.	Mylne & Craig.
M. & W.	Meeson & Wellsby.
N. & Man.	Nevile & Manning.
Nev. & P.	Nevile & Perry.
O'Dou. B. Acts	Bankrupt Acts by J. O'Donghue (1836.)
P. W.	Peere Williams.
Per. & D.	Perry & Davison.
Per. & R.	Perry & Robinson.
Ridg.	Ridgway's Reports.
Russ. & Ry.	Russell & Ryland.
Russ.	Russell.
Russ. & M.	Russell & Mylne.
R. & M.	Ryan & Moody.
S. & S.	Simon & Stuart.
Sch. & L.	Schoales & Lefroy.
Sim.	Simons.
Scott, N. R.	Scott's New Reports.
Str.	Strange.
St. Tr.	Term Reports.
T. R.	.State Trials.
Taunt.	Taunton.
T. & Ph.	Turner & Phillips.
Tyrw.	Tyrwhitt.
V. & B.	Vesey & Beames.
Ves.	Vesey, Junior.
Vez. or *Ves., sen.*	Vezey, Senior.
Y. & C.	Young & Collyer.
Y. & C., C. C.	Young & Collyer, Chancery Cases.
Y. & J.	Young & Jervis.
W. Bl.	Sir William Blackstone.
Wils.	Wilson.
Willes	Willes.

⁂ Other references to works are as usual.

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ERRATA.

Page 83,	in margin,	*for* " s. 3, Eng."	*read* " s. 5, Eng."
87,	do.,	" s. 4, Eng.,"	" s. 6, Eng."
100,	do.,	" c. 186,"	" c. 106."
101,	line 5, of text,	" rader,"	" trader."
119,	last line in notes,	" are,"	" were."
126,	in margin	"⁷[calendar months"]	"⁷ [three calendar months.]"
131,	do.,	" s. 40,"	" s. 112."
140,	last line but 1 of text	" be,"	" by."
142,	margin,	" s. 44,"	" s. 45."
156,	do.,	" s. 139,"	" s. 188."
175,	fifth line of notes,	" s. 27,"	" s. 78."
234,	margin,	" s. 97,"	" s. 164."
268,	margin, at foot, *insert*, " re-enacted in substance s. 236 of same," *before* " from 11 Oct., 1849."		
282,	last line,	*for* " instead of,"	*read* " as well as,"
290,	first line of notes,	" 12 & 18 G.,"	" 11 & 12 G."

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INTRODUCTION.

We are told that in former times, as the name of a Bankrupt, so was the offence itself a stranger to an Englishman, 4 Inst. 277; and although the etymology of the word Bankrupt is involved in some obscurity, yet the origin of our Bankrupt Code is by no means doubtful. Lord Coke derives the word Bankrupt from *banque*, which meant the table or counter of a tradesman, and *route*, which meant a sign or mark, as *cart route* (latterly called rut), thereby implying, by metaphor, one "that hath wasted his estate, and removed his *banque*, so as there is left but a mention thereof." Whilst Mr. Justice Blackstone derives it from *bancus*, a counter, and *ruptus*, broken, 2 Com. 472; referring, perhaps, to a custom that formerly prevailed amongst the bankers of Italy, who used to transact business in public places, seated on forms, with benches or counters before them. It was the custom with these bankers, when any one failed in their payments, to break their bench or counter, either as a mark of dishonour, or for the purpose of substituting another in its place: see 1 Dufresne, 969; Bearves, 322. In reference to the above derivation of Lord Coke, Blackstone, however, adds the following candid observation in a note, that the "title of the first English Statute concerning this offence, 34 Henry VIII., cap. 4, *against such persons as do make Bankrupt*, is a literal translation of the French idiom, *qui font banque route.*"

The condition of a Bankrupt, therefore, being unknown to the Common Law of England, we are to confine ourselves upon that subject to Statute

Law, and to the decisions on such portions of it as, from time to time, came under the consideration of the courts above.

The first statute of any kind passed in England upon the subject of Bankruptcy, was in the twenty-fifth year of Edward III. It relates entirely to the conduct of the Lombard merchants, whose defaults were at that time treated as crimes, whether justly so or not, it would be difficult at this time to determine; and it served as a basis in nearly two centuries afterwards, whereon to found the first statute on the subject of Bankruptcy affecting Englishmen. The adoption, or rather imitation, of this legislative measure may, perhaps, account for the great degree of severity with which the early laws on Bankruptcy visited defaulters, in consequence of acts over which they had but little or, perhaps, no controul whatsoever; but the original view of Bankruptcy, according to which it was regarded as a crime, has long since become obsolete.—Per Denman, Ch. J. 9 Ad. & El. 876.

25 Edw., III. Stat. 5, c. 23.

Item: "Whereas much people of the Realme, which have made contracts with Lombards that be named of the companies dwelling in the same Realme, which Lombards, after that they have made their Obligations to their Creansours, have suddenly escaped out of the Realme, without Agreement made to their Creansours, in deceit and great damage of the People: it is accorded and assented, that if any Merchant of the Company knowledge himself bound by the manner, that the Company shall answer of the Debt. So that another Merchant, which is not of the Company, shall not be thereby grieved or impeached."

The entire of the statute is given in full. It is referred to by Lord Coke, 4 Inst., who gives but a short extract of it. Mr. Deacon, in his valuable work on Bankruptcy, in a note at foot of page 2, observes, that although Lord Coke refers to this statute, yet it "does not appear in our statute book;" and although Mr. Deacon is correct so far as regards the ordinary publications of our statutes, yet it will be found in the first volume of the Statutes of the Realm, large folio, printed by order of the House of Commons in 1810, page 324, in two languages, the original French,* and the above comparatively modern English translation.

THE BANKRUPT LAW OF ENGLAND.

The next statute on the subject, and the first affecting Englishmen, was 34 & 35 Henry VIII., chapter 4, of which the following is the preamble: "Where divers and sundry persons craftily obtaining into their hands great substance of other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any of their creditors their duties, but at their own wills and pleasures consume debts, and the substance obtained by the credit of other men, for their own pleasure and delicate living, against all reason, equity, and good conscience: Be it therefore enacted," &c. By this statute the description of a Bankrupt was not confined to a trader: but every debtor who had committed one of the acts of Bankruptcy specified, might have been proceeded against as a Bankrupt, and his property distributed amongst his creditors. Afterwards followed 13 Elizabeth, cap. 7, which confined acts of Bankruptcy to merchants and traders, a statute said to be the foundation of all the Bankrupt law as now administered. 1 Chr. B. L. 10.

During each successive reign, various enactments were passed altering or amending the law on the subject of Bankruptcy, until they became so numerous as to be productive of much confusion.

Without enumerating the various acts of Parliament which were passed from that period to the present, many of which are now obsolete or repealed, it will be sufficient for our purpose to acquaint the reader, that in England as well as in Ireland, from the changes in society, progress of trade, increase of population, and various other causes, producing multiplied enactments, the code became so very extensive and confused, that it was found necessary to consolidate and repeal. This gave rise to 6 George IV., cap. 16, in England, by the first section of which, almost every act from the reign of Henry VIII., to the 5 George IV., both inclusive, were swept at once from the statute book, and the approved portions re-enacted, so that the latter statute presents us with an entire Bankrupt code of its day. This statute was afterwards amended by 1 & 2 Wm. IV., cap. 56, Eng.; afterwards by 2 & 3 Wm. IV., cap. 114, Eng.; afterwards by 3 & 4 Wm. IV., cap. 47, Eng.; and several others during the close of that and the commencement of the present reign, until a very important act, 5 & 6 Victoria, cap. 122, Eng., was added, together with some minor enactments since. Finally, in the last Session of Parliament, an act was passed, called "The Bankrupt Law Consolidation Act, 1849," extending to 278 sections, embodying and consolidating all the laws relating to Bankrupts in England: that statute repealed all the acts above alluded to, but in several instances re-enacted whole sections without any alteration whatsoever.

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* The earliest instance recorded of the use of the English language in any parliamentary proceeding, is in 36 Edw. III. Introd. St. of R., c. 4, sec. 1.

It was found necessary thus to refer to the subject of the English Bankrupt laws in this Introduction, in order to give the reader some idea of the position in which we stand in Ireland with respect to the statutes above referred to, and the following will serve to give a general view of the matter free from details.

THE BANKRUPT LAW IN IRELAND.

In Ireland the Law of Bankruptcy was unknown before the 11 & 12 Geo. III., c. 8, being the first statute upon the subject in the kingdom. It selected and incorporated all the most valuable provisions then in operation in England, and with such strict observance, that the 66 sections of which it is composed, will be found to be, *verbatim*, the same as corresponding sections in some of the English statutes. It is important to know this, in order to judge of the value and applicability of the old cases, for even though the act be repealed, many of its provisions have been re-enacted.

The evil of accumulation being similarly felt by us, it became necessary to apply a like remedy; and the same thing that was achieved by the 6 Geo. IV., cap. 16, for England, was effected by 6 Wm. IV., cap. 14, for Ireland, by repealing a numerous body of statutes on the subject of Bankruptcy in Ireland, commencing with the first act found upon our statute book, and ending with the last. At the same time it embodied the principal enactments in operation in England, and went far towards assimilating the law in both countries. The English code still however was receiving additions and improvements subsequent to the passing of 6 Wm. IV. for Ireland. Some acts, it is true, have been super-added to our own code, since that period, but they were comparatively trifling until the present act which we have before us, 12 & 13 Vic., cap. 107, which pursuing the same course as 6 Wm. IV., cap. 14, namely, that of assimilating our law with that of England, gives us in conjunction therewith, the law as it stood in England previous to the present session.

6 Wm. IV., c. 14. Ir.

Many and various alterations were effected in the Law of Bankruptcy in Ireland by this act, for which reason it is referred to in the first section of the recent act. It having been, however, the great leading statute, and with some slight allowance, in fact the only one in operation in the Bankrupt Court from the period of its enactment up to the present time, now upwards of thirteen years, it becomes unnecessary to enter into it minutely, or to recount, in any lengthened detail, the changes it effected. The reader will find the subject treated with great accuracy in Mr. Darley's edition of the Irish Statutes for 1836, p. 221, note *a*, wherein he sets forth the changes under nineteen different heads, referring each to the respective section or sections of the statute under which it was contained. Without going very minutely into this subject, it might be well, however, to give a general notion of the changes therein effected, and for this purpose they may be set forth under four classes.

First.—Changes with regard to THE COURT.

Second.—THE CREDITORS.

Third.—THE BANKRUPT.

Fourth.—The MUTUAL ADVANTAGE of both Bankrupt and creditor conjoined.

1st.—With regard to THE COURT; there had been at that time thirty

Commissioners of Bankruptcy in Ireland, twenty-five of whom sat in Dublin, the remaining five in Cork. These were all superseded (sec. 2) by the appointment of one Commissioner, (sec. 3) who was to hold a court in Dublin the entire of the year, if necessary;(ss. 12 & 13) to hold office during good behaviour,(sec. 3) and at a fixed annual salary;(sec. 10) and in twelve months afterwards, by a short act,(1 Vic., c. 48) a second Commissioner was appointed, with like power, jurisdiction and authority to act as the former Commissioner.(ss. 2 & 3.) The power of this court was greatly extended: it was enabled to take the property of the Bankrupt, his lands, tenements, hereditaments, monies, chattels, debts, &c., "whether in England, Ireland, or elsewhere, both in the realm and abroad;"(s. 29) breaking open doors, if necessary, for the purpose, even in England or Scotland.(ss. 41, 42, 43.) It was invested with the power of compelling evidence of all kinds, production of books, deeds, writings, &c.,(sec. 46) the want of the latter being long felt by the former Commissioners. Under proper arrangement the proceedings before the court were capable of being given in evidence.(sec. 111.)

2nd.—With regard to The Creditors; these were much assisted by letting in claims, previously, with great injustice, excluded; claims under annuity deeds, for instance, were regulated.(sec. 66.) Interest was allowed on promissory notes and bills of exchange, and the law on that subject which had been of a doubtful nature, was rendered more decided and intelligible.(sec. 68.) Debts contingent at the time of the Bankruptcy were allowed to be proved.(sec. 67.) Certain costs of judgments, decrees and orders were allowed on proof.(sec. 69.)

3rd.—As to The Bankrupt Himself: he was allowed out of the estate a sum for the maintenance of himself and family, previous to his passing final account.(sec. 132.) He was released from certain liabilities under covenants, irrespective of the consent of the assignees, after due notice. (sec. 89.) He was allowed to manage his own estate himself, of course subject to proper controul, a matter which tended greatly to the relief of the Bankrupt, whilst it was equally serviceable to the creditors.(sec. 135.)

4th.—As to the mutual advantage of both Bankrupt and creditor:

whatever tended to facilitate the disposal of the Bankrupt's property, without wasting it in litigation, or encumbering it with unnecessary costs, must have been a very desirable object to attain, and must have served all parties interested. By this statute all proceedings in Bankruptcy were freed from stamp duty, even the very advertisements in the Gazette which the statute rendered necessary.(sec. 116.) Titles were defended from impeachment by the Bankrupt or any one claiming under him, under certain circumstances of sale.(sec. 101.) This must have tended to realize a larger amount of purchase money, inasmuch as all uncertainty of title proportionally brings down the value of an estate. The landlord of a Bankrupt was prohibited from distraining for more than one year's rent, and in case the arrears then due exceeded the amount thereof, they were obliged to come in and prove their debt, and accept their dividend on the residue, on equal terms with the other creditors.(sec. 88.) If a composition offered by the Bankrupt were agreed to by nine-tenths in number and value of the creditors, that agreement became binding upon the remaining tenth.(ss. 151, 152.) This was very important, as it often happened that the obstinacy or unreasonableness of a single dissentient creditor, produced very mischievous results; a provision which has been found so beneficial in its operation, as to induce a still further extension of that relief, as will be noticed below, at sec. 86 of the recent act. Suits no longer abated by the death or removal of assignees.(sec. 81.) The Bankrupt's estate vested, without any deed of assignment, in the assignees, by virtue of their appointment alone.(ss. 74, 75, 76, 77.) These were the chief alterations effected by that statute, and but few, if any, of them are interfered with under the recent act.

THE RECENT ACT.

(12 & 13 *Vic.*, *c.* 107.)

Taking this act, strictly according to its title and preamble, it would profess to treat of Bankruptcy alone. This however might lead to misapprehension. It contains 118 sections, of which eighty-four in number appertain distinctly to the subject of Bankruptcy, namely, ss. 3 & 4, ss. 6 to 53, both inclusive; ss. 55 to 68, both inclusive; and ss. 72 to 89, both inclusive; and ss. 108 & 109.

Of the remaining sections, eighteen, viz., ss. 90 to 107, are directed to "facilitate Arrangements between Debtors and their Creditors," and closely resemble the provisions contained under the Protection Acts of England.

These persons, therefore, hold a prominent position with respect to the relief afforded them, or the terms offered to their creditors; the remaining sections, being fifteen in number, are common to both classes of debtors.

A slight reference of this kind was necessary before entering on the subject of Bankruptcy, which is, after all, the leading one of the statute.

AS TO TRADER DEBTORS.

This statute must be read in conjunction with 6 Wm. IV., cap. 14, except where there be an inconsistency or variance, and then the recent act must prevail.(sec. 2.) There is not much variance to be found between them. The provisions of 6 Wm. IV. are seldom repealed, although often amended, and the two acts may be looked upon as one code when taken together, with, of course, such short acts, or portions of acts, as had been passed prior to the late act, and subsequent to the former. They are, however, but few, and will be noticed when occasion requires.

The recent statute has effected in the laws of Bankruptcy in Ireland, what 5 & 6 Vic., cap. 122, had previously done in England, namely, it has amended the preceding Consolidation Acts. By reference to its sections respectively, the recent statute will be found to follow very closely, *mutatis mutandis*, upon that English enactment.

The principal alterations it has effected are,

The appointment of Official Assignees. These officers are in every respect analagous to the Official Assignees in England. They were originally created by 1 & 2 Wm. IV., chap. 56, sec. 22, Eng., and still exist.(See Consolidation Act, 1849, ss. 38 et seq.) They were not to exceed thirty in number in England; they are not to exceed two in number in Ireland. Their duties are alike.(Compare sec. 28 of the present act, with sec. 48 of 5 & 6 Vic., c. 122. Eng.) Their authority is alike restricted,(compare sec. 31 with sec. 49); they become equally possessed of the estate, real and personal, of the Bankrupt,(compare sec. 30 with sec. 48); and transfer and pay into the Bank of Ireland,(compare same with same) as the others into the Bank of England. Their liabilities are the same.(compare ss. 30 & 33 with ss. 48 & 53.) The property vested in them equally goes to their successor, in the event of death, removal, or resignation.(sec. 34.) They are alike exempt from personal responsibility;(sec. 35) and alike required to furnish Dr. and Cr. accounts to the Creditors' assignee before dividend, (sec. 36): and alike remunerated.(sec. 37.) The above will appear by reference to the statute and its corresponding sections, *infra.*

TRADERS QUITTING THE COUNTRY.

An alteration of great importance, effected by the new statute, which is taken from the 5 & 6 Vic., cap. 122, is the power of arresting a Debtor after a commission has issued against him, and *before* adjudication, on proof of probable cause that he is about to quit Ireland, or to remove or conceal his goods, with intent to defraud his Creditors.(sec. 4.) He is allowed, however, to shew cause why he should not be further detained, and on doing so he obtains his discharge.(sec. 6.)

ACTS OF BANKRUPTCY—RELATION BACK.

Another important provision is the following—that no person shall be liable to be made Bankrupt, in consequence of any act of Bankruptcy committed more than twelve months previously.(sec. 7.) The importance of this provision cannot be overrated. The mischiefs engendered by the relation back, which, in some cases, the law was obliged to give to acts of Bankruptcy, were grievous and interminable. And this provision has effected a most salutary alteration for the benefit of the trader as well as of the Creditor.

AMOUNT OF DEBT.

Another alteration made, is in the amount necessary to constitute a Petitioning Creditor's debt, by reducing the amount requisite to establish an adjudication of Bankruptcy against a Trader. It had been, by the late statutes, necessary that the Bankrupt should owe to a single Creditor or partners £100. or upwards; two Creditors £150. or upwards; three or more £200. or upwards. This is now reduced to £50., £70., £100., or upwards, respectively.(sec. 9.)

WHO MAY BE TRADERS.

A number of persons have been admitted into the class of traders, liable to become Bankrupts, who hitherto either were not admitted at all, or whose occupations afforded questions of doubt in point of law.(See sec. 10.) This was done in accordance with the English statute, 5 & 6 Vic., c. 122, sec. 10.

PAY, HALF-PAY, PENSIONS, ETC.

The commissioners may now order such portion of the pay, half-pay, emolument, or pension of any Bankrupt, as on communication with the Secretary of War; or the Lords Commissioners of the Admiralty; or the Commissioners of Customs or Excise; or the chief officer of any department to which a Bankrupt may have belonged, it is consented may be applied in payment of his debts; and a provision is made for lodging the order in the public offices alluded to.(sec. 38.)

SALARIES OR WAGES.

A maximum of £30. has been established in this instance. The sum, under 6 Wm. IV., cap. 14, sec. 59, for which the commissioner might give a peremptory order for payment of six months' wages or salary, to Bankrupts' servants or clerks, was not limited to any specific amount, and extended to six months' arrears as due by the Bankrupt. It is now confined to three months, with a maximum of £30. for clerks or servants; (sec. 40) and to a maximum of forty shillings for labourers or workmen. (sec. 41.)

INTEREST UPON DEBTS.

By 6 Wm. IV., cap. 14, sec. 68, (a provision taken from the 6 Geo. IV., cap. 16, Eng.,) holders of bills of exchange or promissory notes, over due at the issuing of the commission, were enabled to prove for legal interest, although interest was not reserved. The Irish statute has the words "legal interest;" while the words in the English statute are "interest at such rate as is allowed by the Court of King's Bench in actions upon such bills or notes." The section of the recent act goes somewhat further, by adopting the provisions contained in sec. 180 of the "English Consolidation Act," (1849) whereby the former provision (originally passed for bills of exchange or promissory notes), is now extended to all debts or sums certain, whereupon interest is not reserved or agreed for, over due at the issuing of the commission. The rate of interest is in this act, named as "a rate not exceeding the current rate of interest." By reference to the English Consol. Act, (recited section,) it will be found limited to "four pounds per cent. per annum." In both instances the time is calculated up to the date of the Commission in Ireland, and the time of the Petition in England, (there being no Commission now in England by the act of 1849,) and the interest to commence, if under a written instrument, "from the time when such debts or sums certain were payable;" or if otherwise, then from the time that demand of payment should have been made in writing, "the written demand to contain" a notice to the Debtor, that interest will be claimed from the date of such demand, until the time of payment.(sec. 63.)

COMPOSITION TO CREDITORS.

By 6 Wm. IV., cap. 14, sec. 151, it was enacted, that after the Bankrupt should have passed his last examination, a composition agreed to by nine-tenths in number and value of the Creditors, assembled at a meeting, called upon a twenty-one days notice in the *Dublin Gazette*, should be binding upon the remaining one-tenth in number. By sec. 86 of the recent act, three-fifths is substituted for nine-tenths of those assembled. The Creditors, however, are now allowed to be represented by attorney, and this, upon a second meeting, requires the remaining two-fifths, instead of one-tenth, as before.

CERTIFICATE OF CONFORMITY.

A most important and useful enactment upon this subject is contained in sec. 56. The signature of the Creditors to the Bankrupt's certificate is no longer requisite. The allowance of such certificate rests entirely with the commissioner, the law relying more upon his discretion, after hearing the case on both sides, than upon the illjudged tenderness of humane, or the ill directed hostility of unfeeling, Creditors. A provision exists, however, whereby the Creditors, on appeal to the Lord Chancellor, are allowed to show cause against the commissioner's decision.

PROCEEDINGS, EVIDENCE.

Heretofore, in order that the proceedings of this court be entered of record, so as to make them evidence upon future occasions, it was necessary to undergo the tedious and expensive process, of petitioning the Lord Chancellor for his consent thereto. This course is now dispensed with; and, by section 84, the commissioner is empowered to give his permission in writing, which will be henceforth equivalent to the order of the Lord Chancellor, hitherto obtained at such a cost of both time and money.

MORTGAGEES MAY BID AT SALE.

A like power is conferred upon the commissioner, in the event of a sale taking place before them, upon the application of any mortgagee being desirous to bid. Hitherto the same tedious and expensive process of petitioning the Lord Chancellor was necessary. This is now left entirely to the discretion of the commissioner, even without application.(sec. 67.)

CITY ATTACHMENTS.

A clause is introduced respecting City Attachments which will, in some measure, relieve the City trader from the effects of this formidable proceeding, and protect the Creditors from its destructive operation. Under the 36 sec. of 7 & 8 Vic., cap. 90, Ir., security was afforded to certain persons in their dealings and transactions with Bankrupts, if made really and *bonâ fide*, and before commission issued. In recounting the several contingencies likely to occur in the course of business or trade, a clause occurred rendering valid all "Executions and Attachments against the lands and tenements, or goods and chattels of a Bankrupt," notwithstanding a prior Act of Bankruptcy committed, provided such were "*bonâ fide* executed or levied before the date and issuing of such commission;" and provided also the plaintiffs had no notice of the Act of Bankruptcy. Considerable doubt was entertained as to how far this clause extended to the protection of city attachments which, after all, were but matters of *mesne process*. The 68 sec. of the new Act removes all doubt upon this head, by requiring that all goods and chattels, under seizure at the issuing of the commission, by virtue of an attachment, shall be delivered up to the assignees of the Bankrupt's estate.

JUDGMENTS.

The effect given to Judgments by 3 & 4 Vic., cap. 105, sec. 22, by making them charges upon real property, bestowed unexpected advantages upon Judgment Creditors in giving a priority in the Bankruptcy Court, contrary to the spirit of 6 Wm. IV., cap. 14, sec. 136. By the recent Act Judgments are restored, as far as Bankruptcy matters, to the position in which they stood under 6 Wm. IV., cap. 14. (See sec. 108, and note thereto.)

PLEAS OF CONFESSION AND CONSENTS.

These can no longer remain secret instruments in the hands of Plaintiffs, as they must now be registered within twenty-one days after execution. The mischiefs arising from Pleas of Confession being secretly executed, by parties obtaining money or goods at the moment of the delivery of the goods or receipt of the money, and before any demand was made or payment refused, or before any process was issued for the recovery thereof, are too well known to need comment. The fact of requiring a Plea of Confession under such circumstances, afforded a presumption that there existed a strong suspicion of insolvency in the mind of the money lender; and, as to the trader, no man who was not verging on Bankruptcy would be found to comply with a demand of such a nature. Pleas of Confession, Cognovits, Acknowledgments, Consents for Judgment, and the Judgments themselves, and Execution, are all now fraudulent and void as against Assignees, unless registered, in the same manner as Warrants of Attorney for Confessions, &c., are now required, namely, within twenty-one days of execution or signing; those already executed are allowed twenty-one days after the 1st of November, 1849.

ARRANGEMENTS AND PROTECTION.

As adverted to in the foregoing pages, a portion of this statute, consisting of eighteen consecutive sections, apparently forming a particular subdivision in itself, is occupied in extending relief to " Debtors," a certain portion of whose Creditors are satisfied with whatever proposal the Debtor is able to make, for the future payment or compromise of his engagements. Certain proceedings are entered into, subject to the controul of the Court.(ss. 90 & 91.) A private meeting is first held.(sec. 92.) Notice of a second meeting, personally or in the Gazette, as the case may be, is served upon all Creditors.(sec. 93.) A president is appointed.(sec. 96.) Resolutions entered into.(sec. 94.) Creditors vote at these meetings.(ss. 98 & 99.) Estate vests in trustee, if appointed.(sec, 101.) The trustee released.(sec. 107.) And a certificate, operating "to all intents and purposes as fully as if the same were a Certificate of Conformity under a Bankruptcy," is given to the Debtor.(sec. 106.) If the phrase, *to all intents and purposes*, be interpreted as a protection from liability of all *future acquired property*, then, in a great measure, this Act must very much affect the working, if not abrogate the power of the Insolvent Debtors' Act. Pending all these proceedings, the Debtor is protected from arrest.(ss. 92 to 95.)

This subdivision of the statute resembles what are called the Protection

Acts in England. They partake of the spirit, and, in many instances, follow the details of 5 & 6 Vic., cap. 116, Eng.; 7 & 8 Vic., cap. 70, Eng.; 7 & 8 Vic., cap. 96, Eng., which last was an amendment of 5 & 6 Vic., cap. 116.

Some difficulties may arise as to the application of these sections. Two of the English statutes recited above, plainly and specifically set forth that they are intended for the relief of persons "not being traders within the meaning of the statutes," &c., or being such traders, owing less than £300. The other, namely, 7 & 8 Vic., cap. 70, refers to a Debtor "not being a trader within the meaning of the statutes now in force, relating to Bankrupts," and to no other persons whatsoever. It will be found by sec. 90 and following of the recent Irish Act, that no word is used except the word "Debtor" upon such occasions; and it will also be seen that the preamble of the Statute itself is exclusively directed to BANKRUPTCY. On the other hand, sec. 90 opens with a *Preamble of its own*, reciting that "it is desirable to facilitate arrangements between Debtors and their Creditors;" and then it goes on to frame proceedings necessary to attain that end. In one section, directing the requisite details for the purpose, the following phrase occurs: "within ten miles of the town or place where the Petitioning Debtor last carried on *trade or business*." The words "trade or business," introduced into a notice, at such an early period of the proceedings, and which is, to all appearance, absolutely and indispensably necessary to be adopted, previous to the Court affording relief, will, it is presumed, cause much difficulty in the general construction of that portion of the statute, and in the interpretation of its intentions. The reader is, however, referred to the above sections themselves, and to the notes at foot, in order to form his own conclusion.

THE ORDER OF THE WORK.

The first thing proposed to be the subject matter of this work, will be the law respecting traders, which it was found necessary to give in full detail, inasmuch as there has been great revision upon that subject, by adding a considerable number to the list of those hitherto deemed traders, subject to the Bankrupt Laws, as before observed.

After this, will follow the law regarding Acts of Bankruptcy, inasmuch as this portion of the law likewise, has received considerable changes by the recent statute.

After this, the Petitioning Creditor's Debt. Here, likewise, great and important alterations have been made.

After this, will appear the Statute itself, with a marginal column, containing such enactments in England as have been found to correspond therewith; and at foot of the sections will be found a few notes of the editor's, which, if of no other importance, will be useful as a reference to the portions either of this Act, or of other Acts necessarily connected with the subject, therein noted.

Then will follow 6 Wm. IV., cap, 14, with short foot notes referring to each section; with a list of all subsisting statutes now in force in Ireland, together with the general rules and orders in Bankruptcy, now in operation. And then the INDEX.

THE LAW OF BANKRUPTCY
IN IRELAND.

CHAPTER I.

WHO MAY BE BANKRUPTS.

All those specially named by Statute as liable to become Bankrupts, without further proof of Trading, &c., were hitherto to be found in 6 Wm. IV., c. 14, sec. 18, Ir. A considerable addition has been since made to their number, by 12 & 13 Vic., cap. 107, sec. 10.

The two sections are here set out in full; after which, all the Traders contained in both, will be found in the List of Traders which follows, arranged in alphabetical order for more easy reference.

What persons deemed traders liable to become Bankrupts.

6 Wm. IV., cap. 14, sec. 18.—"And be it enacted, That all bankers and brokers, and persons using the profession or trade of scrivener, receiving other men's monies or estates into their trust or custody; and persons insuring ships, or their freight, or other matters, against the perils of the sea; warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels or coffee houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or by retail; and all persons who, either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders, liable to become Bankrupt: Provided that no farmer, grazier, common labourer, or workman for hire, receiver general of the taxes, or member of, or subscriber to, any incorporated commercial or trading companies, established by charter, or under, or registered in pursuance of, Act of Parliament, shall be deemed, as such, a trader liable by virtue of this act, to become Bankrupt."

The above is taken *verbatim* from 6 Geo. IV., c. 16, s. 2, Eng. Many of these had been deemed subject to the Bankrupt Laws in England, for a very considerable period. Others were not specially so declared, until 6 Geo. IV. So also in Ireland, with regard to Traders, under the above section of 6 Wm. IV., which was copied from 6 Geo. IV.

The following are entirely new in Ireland, and were so likewise in England, on the passing of 5 & 6 Vic., cap. 122, Eng., from sec. 10 of which the present is copied *verbatim.*

Persons specially named liable to become Bankrupts.

12 & 13 Vic., cap. 107, sec. 10.—"And be it enacted, That all livery stable keepers, coach proprietors, carriers, shipowners, auctioneers, apothecaries, market gardeners, cow keepers, brick makers, alum makers, lime burners and millers, shall be deemed traders, and subject and liable as traders, to this and to the other Statutes relating to Bankrupts."

* * *

LIST OF TRADERS.

Alum-makers.—12 & 13 Vic.] These were not hitherto subject to the Bankrupt Laws in Ireland. They were included together with brickmakers, and lime-burners in 5 Geo. IV., cap. 98, Eng., although afterwards omitted in 6 Geo. IV., cap. 16, "unaccountably," according to Mr. Deacon, p. 31.

Apothecaries.—12 & 13 Vic.] Hitherto not traders liable, unless they sold drugs or goods to chance customers, not patients. Ex p. *Daubeny* 2, Dea. 72; 3 M. & A, 16.

Auctioneers.—12 & 13 Vic.] Hitherto not liable except as furniture-brokers. Ex p. Moore, 2 Dea. 287; 3 M. & A. 130.

Bankers.—6 Wm. IV.] These were liable under the first statute on Bankruptcy in Ireland, 11 & 12 Geo. III., cap. 8. If one acts as a banker he will be treated as such, though not keeping an open banking-house. Ex p. *Wilson,* 1 Atk. 218; a shareholder in a joint-stock banking company, receiving dividends two successive years, is a banker. Ex p. *Wyndam,* 1 M. D. & D. 146; Ex p. *Hall,* 3 Dea. 405. But, otherwise, where no intention *bonâ fide* of following same for profit, and no dividends received. Ex p. *Brundrett,* 2 Dea. 219; Ex p. *Atkinson,* 1 M. D. & D. 300. Nor is an army agent, as such, a banker, 1 Mont. B. L. 2. If a banker stop payment in Ireland, without committing an act of Bankruptcy, his property must be administered under the Bankers Act, 33 Geo. II., cap. 14, Ir., which remains unrepealed: *Hayden* v. *Carroll,* 3 Ridg. 545. Although stopping payment is not of itself an act of Bankruptcy: 2 Bl. Com. 479; *Hopkins* v. *Grey,* 7 Mod. 139; per Lord Clare, 3 Ridg. 602, yet it is not unlikely to be preceded or accompanied by circumstances, affording evidence of such: see *Hayden* v. *Carroll,* supra; see O'Don. Bankrupt Acts, p. 50, with observations *in notes* on *Lowe, Ass. of Delacour* v. *Beamish & Others.*

In England, a banker was held to be within the words "any trade or dealing for profit," in the 57 Geo. III., cap. 99, which prohibits clergy from trading: *Hall* v. *Franklin*, 3 Mee. & W. 259. It ought to be "for *gain or* profit:" see Act, sec. 3. The Irish Act, 5 Geo. IV., cap. 91, sec. 2, has the same words; so that *Hall* v. *Franklin*, is applicable in Ireland. And as to security of banks, notwithstanding clergymen being partners, see now 1 Vic., cap. 10, sec. 1.

Acting as a stock broker, and receiving others' money, and paying out on checks like a banker: but not appearing to be such, either by books or common repute—held not a banker, under 33 Geo. III., cap. 14, *Stafford* v. *Henry*, Ir. Jur. 183, Hil. 1848.

Bleachers.—6 Wm. IV.] These were not liable previous to 6 Wm. IV., cap. 14, in Ireland; nor previous to 6 Geo. IV., cap. 16, in England, Chr. 46. Sir William Evans, in his letter to Sir S. Romilly, said that "bleachers had no more right to be designated traders, than washerwomen."—Sir W. Evans' *letter*, p. 167.

Brick makers.—12 & 13 Vic.] These were never liable in Ireland before the present statute, nor in England, except for a short time, (see Alum-makers, *supra)*, before 5 & 6 Vic., cap. 122; at least, where a man made bricks from his own land, although, as a means of profit, making them wholly for sale, and even purchasing sand, fuel, &c., he was not a trader within the Bankrupt Laws: *Parker* v. *Wells*, 1 T. R. 34; *Sutton* v. *Weely*, 7 East.; Ex p. *Harrison*, 1 Bro. C. C. 173. But if the bricks were made from earth, procured specially for the purpose, he was deemed a trader: *Parker* v. *Wells*, *supra*, and see page 24.

Brokers.—6 Wm. IV.] These were liable in Ireland under 11 & 12 Geo. III., cap. 8—in England, 5 Geo. II., cap. 30. This is here taken as a generic phrase, and other brokers are species: De Gex. 26. Pawnbrokers are brokers: *Highmore* v. *Molloy*, 1 Atk. 206; *Rawlinson* v. *Pearson*, 5 B. & A. 124; Ex p. *Stevens*, 4 Mad. 256; and so are shipbrokers: *Pott* v. *Turner*, 6 Bing. 702; 4 Moore 551; and insurance brokers: 6 Bing. 708; 4 Mad. 256; and also bill brokers: see Ex p. *Phipps*, 2 Dea. 487; but not if dealing in accommodation bills without further evidence of trading, *ibid.* But getting a bill discounted, and only proving, in addition, "that upon one occasion he was employed to get discounted a bill for £48," without specifying the parties' name and the owner of the money, with which the bill was cashed, will not make a man a broker: Ex p. *Harvey*, 1 Dea. 571; 2 Mon. & A. 593.

Builders.—6 Wm. IV.] These were not traders until 6 Wm. IV., cap. 14. A builder is one who builds houses for sale, whether on land purchased or leased for the purpose, or builds for other persons for hire, or by contract: Ex p. *Nerincks*, 1 Dea. 78; 2 Mon. & A. 384; but purchasing or being possessed of land under a forfeited mortgage, finding carcases of houses there and finishing at their own expense, in order to sell or let, also purchasing a few other carcases, though not as mortgagees, and employing a builder to finish for same purpose—held not a joint trading as *builders*, within the meaning of Bankrupt Laws. Ex p. *Edwards*, 4 Jur. 153;

1 M. D. & D. 3. Before 6 Geo. IV., cap. 16, Eng., builders were not liable to be made Bankrupts in England: 5 Esp. 147; 2 Cam. 300.

Carpenters.—6 Wm. IV.] It does not seem that a person who merely works at his trade, is meant hereby, but one who purchases timber and other materials which he works up: *Chapman* v. *Lanphier*, 3 Mod. 155; 1 Cook, B. L. 49. Lord Holt decided a ship carpenter was within the former statutes: *Kirney* v. *Smith*, 1 Ld. Raym. 741.

Calenderers.—6 Wm. IV.] These were subjected, for the first time, to the Bankrupt Laws, by 6 Wm. IV., cap. 14, in Ireland; and by name, under the 6 Geo. IV., cap. 16, in England. Mr. Christian says, that, within his own experience, he found one commission taken out against a calenderer; it was said that the purchase of machinery and bees' wax, and not merely polishing the customers cloth, supplied him with the character of a trader; 1 Chr. 46.

Cattle and Sheep Salesman.—6 Wm. IV.] These were included in 6 Geo. IV., cap. 16, Eng.; in order to set at rest a doubt raised under 5 Geo. II., cap. 30, as to their coming under the term factor: see Wills 139; Christian, 579; and following that course it was introduced by 6 Wm. IV., cap. 14, into Ireland. A farmer accustomed to purchase more sheep than necessary to stock his farm, and derive profits out of the sale of the surplus, is a trader within 6 Geo. IV., cap. 16; Ex p. *Newall*, 3 Dea. 333. A drover was in the repealed English Statutes, and it was decided that it meant one who employed himself generally in buying cattle and selling them afterwards, and as such he might be a *cattle salesman: Bolton* v. *Sourby*, 11 East. 278; *Mills* v. *Hughes*, Willes 588: and see per Bayley, J. 11 East, 279.

Carriers.—12 & 13 Vic.] These were not, as such, previously subject to the Bankrupt Laws: Ex p. *Wiswold*, Mon. 263.

Coach-proprietors.—12 & 13 Vic.] The above observation alike refers here.

Cow Keepers.—12 & 13 Vic.] A cow keeper is one who grazes cows and sells the milk with a view to profit: *Carter* v. *Deane*, 1 Swan. 64; they were not considered traders until specially named in the statute.

Dyers.—6 Wm. IV.] Previous to 6 Geo. IV., cap. 16, in England; some doubt was entertained as to this class which is now removed: see Chr. 46.

Fullers.—6 Wm. IV.] These were first made subject to the Bankrupt Laws in England, by 6 Geo. IV. cap. 16; in Ireland, by 6 Wm. IV., cap. 14.

Inn Keepers.—6 Wm. IV.] See Keepers of—

Insurers of Ships or their freights, or other matters, against perils of the Sea.—6 Wm. IV.] Before 6 Geo. IV., cap, 16, Eng., this class of persons, (otherwise *underwriters*,) could not as such be Bankrupts: Ex p.

Bell, 15 Ves. 355. Insurance brokers are clearly not within that clause: see Ex p. *Stevens*, 4 Mad. 256; this description of persons was first adopted by 6 Wm. IV., cap. 14, in Ireland.

Keepers of Inns, Taverns, Hotels, or Coffee Houses.—6 Wm. IV.] An Innkeeper in England, before 6 Geo. IV., cap. 16, was not subject to the Bankrupt Laws, 3 Lev. 310; Skin. 291; unless he sold to a person out of the house who sent to purchase, 1 T. R. 572; 1 Rose 84; and same of coffee-house keepers. Hotel keepers were not within the former statutes. The keeper of a private lodging house, who also seeks a profit by finding and cooking provisions, would be liable; but it was in the character of a hotel keeper, and this although the provision be set apart as the separate property of each guest: *Smith* v. *Scott*, 9 Bing. 14; 2 M. & Sc. 35; and although they take their meals with the mistress of the house: *Gibson* v. *King*, 7 Jur. 1044; 10 Mee. & W. 667; 1 Car. & M. 458; but if she does not sell provisions, it is otherwise: Ex p. *Wilks*, 2 Dea. 1; 2 Mon. & A. 667; Ex p. *Bowers*, 2 Dea. 99; 3 Mon. & A. 53; even though the furniture be bought for the purpose of being let with the lodgings: Ex p. *Bowers*, *supra*. The keeper of a *boarding house* is a trader, under 6 Geo. IV., cap. 16; Ex p. *Daniel*, 7 Jur. 334; (and see also *Victuallers*.)

Lime burners.—12 & 13 Vic.] It had been long doubted whether such was a trader within the meaning of the Bankrupt Laws: Ex p. *Ridge*, 1 V. & B. 360; 1 Rose, 316; all doubts are now removed by the statute.

Livery stable keepers.—12 & 13 Vic.] These were not subject to the Bankrupt Laws previously, nor in England, before 5 & 6 Vic., unless they bought and sold hay and straw, &c., generally: *Carman* v. *Denew*, 3 M. & Sc. 761; 10 Bing. 292; Ex p. *Lewis*, 2 Dea. 318; or bought horses and let them out for hire: *Martin* v. *Nightingale*, 11 Moore, 305; see Arch. 54; De Gex, 31.

Market Gardeners.—12 & 13 Vic.] These are now, for the first time, made liable to the Bankrupt Laws in Ireland, following 5 & 6 Vic., cap. 122, for England.

Millers.—12 & 13 Vic.] These were not liable to Bankruptcy hitherto: See Arch. 55; De Gex, 31.

Printers.—6 Wm. IV.] These were, for the first time, subjected to the Bankrupt Laws in England by 6 Geo. IV., cap. 16; in Ireland, 6 Wm. IV., cap. 14.

Packers.—6 Wm. IV.] It is questionable whether this is a term well understood in Ireland, although much in use in London. It means persons employed by merchants to receive and, in some instances, to select goods for them from manufacturers, dyers, calenderers, &c., and pack the same for exportation: Arch. B. L. 46.

Scriveners.—6 Wm. IV.] Scrivenery is unknown as a trade in Ireland, and should not be confounded with the occupation of the modern copying clerk: See O'Don. B. Acts, p. 102, note (*a*). The trade, as such, has become obsolete in England; per Gibbs, Ch. J. 3 Camp. 539. Lord Hardwicke observed that bankers had taken upon them to act as scriveners, and therefore it became necessary for the legislature to add bankers as being liable to Bankruptcy: Ex p. *Wilson*, 1 Atk. 218, (anno 1752.)

Ship owners.—12 & 13 Vic.] These were not liable, merely as such, before the present Act, 12 & 13 Vic., in Ireland, or before 5 & 6 Vic., cap. 122, in England, unless the ship owner freighted his ship with a cargo: *Carter* v. *Deane*, 1 Swam. 64.

Shipwrights.—6 Wm. IV.] These were held to be subject to the Bankrupt Laws, even before the statute in England, per Lord Holt, *Kirney* v. *Smith*, 1 Lord R. 741; not, it should seem, a person who merely works at the trade, but one who also purchases and furnishes the materials: Arch. B. L. 47; as a carpenter merely he would have been doubtful: *Chapman* v. *Lamphier*, 3 Mod. 155.

Trade of Merchandize.—6 Wm. IV.] "And all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail." This needs no explanation. The trade of merchandize means merely the purchasing of articles of merchandize, for the purpose of selling them again at a profit. The words "*commission, consignment, or otherwise*" are descriptive, and were introduced for the first time into 6 Geo. IV., cap. 16, Eng., from whence they were copied into 6 Wm. IV., cap. 14, Ir. As to commission, a person receiving a commission for orders, not debited with the goods himself, was not a trader, per Abbot, C. J., *Doe* v. *Laurence*, 2 Car. & P. (N.P. R.) 135.

Victuallers.—6 Wm. IV.] Before 6 Wm. IV., cap. 14, in Ireland, and 6 Geo. IV., cap. 16, in England, these were not subject to the Bankrupt Laws: See 4 Burr. 2064. In England victuallers must be licensed; it seems not a specific but a general term in all the reported cases, and includes certain classes of innkeepers, alehouse-keepers, and others, who provide entertainment, &c. The following definition of the term is met with in Tomlins' Law Dictionary:—"Victuallers are those that sell victuals; and we call now all common alehouse keepers by the name of victuallers." It might perhaps have included all the following, set forth in the statute of 25 Edw. III., c. 6, (anno 1349): "Item, that Butchers, Fishmongers, Regrators, Hostelers, Brewers, Bakers, Pulters, and all other Sellers of all manner of Victuals, (*et om̃es alii venditores victualiũ quoȝcumq;*) shall be bound to sell the same Victual for a reasonable price, having respect to the price that such Victual be sold at in the places adjoining, so that the same sellers have moderate gains, and not excessive."

In the forms given in the English books of practice will be found the following —— *of a victualler, by keeping a certain house for the providing of meat, drink, and entertainment, for persons requiring the same, and selling such articles of meat and drink for profit, and sought, &c.:* 2 Arch. B. L. 21; 2 De Gex. B. L. 302—and a shorter form to same effect: 2 Mont. & A., B. L. 10; see also Jones's Law of Bailments, by Theobald, 95, *n.* 1, 2; Bac. Abr. Inns, C. Jeremy's Law of Carriers, &c., 139; Wilcock's Law of Inns, &c., p. 1. Where victuallers confined themselves to supplying guests in their houses, they were not liable; but if a general intention to sell out of doors, however small the quantity, could be shewn, they were then considered traders under the statute: *Crisp* v. *Pratt*, Cro. Car. 549; *Newton*, v. *Trigg*, 3 Mod. 329; 1 Salk. 109; *Saunderson* v. *Rowles*, 4 Burr, 2067; *Buscall* v. *Hogg*, 3 Wils. 146; *Patman* v. *Vaughan*, 1 T. R. 572; Ex. p *Maginnis*, 1 Rose, 84. From the above it is evident that the word victualler is not meant in the same sense in which it is used of late years, in Dublin, where it is now almost universally adopted in place of the word butcher, who might, however, come under traders by *buying and selling, &c.*, see next page.

Warehousemen and Wharfingers.—6 Wm. IV.] Those are denominations familiarly understood in London; the latter is scarcely, if at all, understood in Ireland, at least as a distinct branch of trade; the former is but partially adopted, and even so, coming under the head of buying and selling for their living, renders further comment unnecessary. It does not, it should seem, include in it any one who owns or keeps a warehouse, not being otherwise a trader: Arch. B. L. 46. Wharfingers in London, are proprietors of water sides, who land, warehouse, and ship goods, foreign or coastwise, for reward: *ibid.*

And all persons who either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities.—6 Wm. IV.] And this, although they cannot be classed under any particular denomination. In such case a person may be called "dealer and chapman," meaning one who buys and sells mere personal goods with a view to profit, a condition which, if proved, would, in England, support a fiat, although coupled with one not indicating a trader: Ex p. *Herbert*, 2 Rose, 248; *Hall* v. *Small*, 2 B. & B. 25. In the repealed English Statute, 21 Jac. I., cap. 19, sec. 2, the words are, "all and every person and persons using, or that shall use, the trade of merchandize by way of bargaining, exchange, bartering, chevisance, or otherwise, in gross or by retail, or seeking his or her living by buying and selling." The cases, therefore, which have been decided upon these words, "buying and selling," in the statute of James I., will furnish the construction applicable to the same words here.

First.—As to *buying and selling:* It must be a buying *and* selling, or, at least, an *intent* to sell; for a buying alone, without an intent to sell, 1 Com. Dig. Bankrupt A; or, a selling alone, without a buying *(ibid.)*, will not constitute a trading within the meaning of this clause—and the buying must be a purchase in the common, ordinary, and not merely in the legal, acceptation of the term, per Lord Loughborough in *Parker* v. *Wells*, Cooke, 58. And if a man purchase goods for his own use, that will not make him a trader, even although he afterwards sell such of them as he may not have occasion for, because he does not *seek his living* by the buying and selling: see Dict. of Lord Mansfield in *Parker* v. *Wells*, 1 T. R. 34;

and see *Summersett* v. *Jarvis*, 3 Brod. & Bing. 2; 6 Moore, 56. So also, if a man sell the produce of his land, even although he buy some other article to mix with it, in order to sell the produce so mixed to a greater advantage, it will not make him a trader within this clause: *Patten* v. *Brown*, 7 Taunt. 409; and see Ex p. *Salkeld*, 3 M. D. & D. 125. But otherwise, where the produce of the land is merely the raw material of a manufacture, and the manufacture is not the usual or necessary mode of enjoying the land: *Wells* v. *Parker*, 1 T. R. 34; S. C. 1 T. R. 783. If a man buy horses to sell again, with a view to profit, he is liable to be a Bankrupt: Ex p. *Gibbs*, 2 Rose, 38; *Wright* v. *Bird*, 1 Price, 20; but if he sells only such as he bred and reared himself, he is not. If a butcher buy sheep or cattle to kill, and sell them with a view to profit, he is liable to be a Bankrupt: *Dally* v. *Smith*, 4 Bur. 2148; but if he kill only such as he bred and reared himself, he is not. If a fisherman be in the habit of purchasing fish from others, to sell again, with a view to profit, he is liable to be a Bankrupt: *Heany* v. *Birch*, 3 Camp. 233; but if he sell only such fish as have been caught by him, he is not. Persons who purchase coals to sell again, with a view to profit, are liable to be made Bankrupts: Cook, 48. 73; but if they sell only such as they procure from their own mines, they are not: *Port* v. *Turton*, 2 Wils. 169. So a person who owns or rents a mine, works it, and sells the ore; or rents salt mines and brine pits, and makes salt from the springs and rock salt, and obtains some of the brine from adjoining premises—Ex p. *Atkinson*, 1 M. D. & G. 300—is not thereby subject to the Bankrupt Laws; for although he sells, he *does not buy: Port* v. *Turton*, 2 Wils. 169; and the same of a person who sells stones, taken from his own quarry: Ex p. *Gardener*, 1 Rose, 377; 1 Ves. & B. 45.

The following cases on "buying and selling," previous to 5 & 6 Vic., c. 122, s. 10. Eng, although directed to brick makers and lime burners, whose *trading* is now placed beyond doubt by the recent statutes, both here and in England, (see List of Traders, pp. 19. 21. *supra*,) will yet be useful, as developing the view taken by the courts, as to *buying and selling* generally.

A man who made bricks from his own land, as a mode of enjoying the profits of it, even although he made the bricks entirely for sale, and purchased sand and fuel, &c., for the purpose of making them, was not a trader within the meaning of the Bankrupt Laws: *Parker* v. *Wells*, *supra*, Cooke, 52. 63; *Sutton* v. *Weely*, 7 East. 442; or, if he purchased chalk for the purpose of burning with the clay, to improve the bricks, and sold a portion of the chalk when converted into lime: *Paul* v. *Dowling*, 3 Car. & P. 500; Mood. & M. 263, and this, whether he was a freeholder or termor merely: Ex p. *Gallimore*, 2 Rose, 424; or a devisee for life: Ex p. *Burgess*, 2 Glyn & J. 183; but if he *bought* the earth as earth, by the load or otherwise, and manufactured it into bricks for the purpose of sale, that would render him liable to be a Bankrupt: per Lord Loughborough in *Parker* v. *Wells*, *supra;* Cooke, 58. Therefore, when a man made bricks for sale, of earth dug and taken from the waste, without the assent of the lord, but afterwards paid to the lord a consideration for it, this was holden to be tantamount to a purchase of the earth, as earth, by license from the lord, and that, consequently, the party was a trader within the meaning of the Bankrupt Laws: Ex p. *Harrison*, 1 Bro. C. C. 173; but a man giving, as part of the purchase money for land, four shillings per thousand for all bricks made thereon, and it appearing the bricks were made of the clay of the land itself—held not a trader: *Heane* v. *Rogers*, 4 Moore & P. 486; 9 B. & C. 577; and see as to *List of Traders*, p. 18, *et seq.*, under respective heads. If a man made bricks for his own use, merely from earth either taken from his own land or purchased by him, although he should sell some of them that he has not occasion to use, he is not, thereby, become a trader: per Lord Mansfield, in *Parker* v. *Wells*, 1 T. R. 34. In like manner, in England, before the recent statute of 5 & 6 Vic. cap. 122, if a man burnt lime for sale, from chalk or lime obtained upon his own farm, that would not make him a trader within the meaning of the Bankrupt Laws: Ex p. *Ridge*, 1 Rose, 316: but if he purchased the chalk or limestone, and burnt it for sale, it was otherwise: *Paul* v. *Dowling*, 1 Car. & P. 500. If a man purchase timber, even standing timer, to sell again with a view to profit, he is liable to be a Bankrupt: *Holroyd* v. *Gwynne*, 2 Taunt. 178; but if he sell only such as he cuts down on his own land, he is not. So if the owner of an estate, with a view to its improvement, build houses, and, afterwards, happen to sell or let them, he is not a builder within the act; but if a person take a lease of land with carcases of houses thereon, and finish the houses, with intent to dispose of them at a profit, he is: Ex p. *Nerinx*, 2 Mon. & A. 384; 1 Dea. 78. If a man buy milk to sell it again, with a view to profit, he is liable to be a Bankrupt; but formerly, if he sold the milk only which he procured from his own cows, even although he occasionally sold the cows, when they were no longer fit for that purpose, he was not: *Carter* v. *Dean*, 1 Swan. 64; but now he would be liable to become Bankrupt as a cow-keeper,(p. 20, *supra.*) So if a man buy cheese or cider to sell again, with a view to profit, he is liable to be a Bankrupt; but if he sell only the cheese, which he has made from the milk of his own cows, or the cider, which he makes from fruit of his own trees, he is not: per Lord Mansfield, in *Parker* v. *Wells*, 1 T. R. 34; so if a man purchase the whole daily impression of a newspaper to sell again, with a view to profit, and risk the loss of such as may remain unsold, he is liable to be a Bankrupt: *Gimmingham* v. *Laing*, 2 Marsh, 236; 6 Taunt. 532; but merely labouring for hire will not render a man liable to be made a Bankrupt within the statute, because there is neither a buying nor a selling, see *Labourers*, p. 28, *infra.* So buying and selling government stock, or other public stocks or securities, does not render a man liable to be made a Bankrupt, because they are not "goods or commodities" within the meaning of this clause of the statute: *Colt* v. *Netterville*, 2 P. Wms. 308; nor, for like reason, will the buying and selling land, or any interest therein, make a man liable to be a Bankrupt, for the same reason: see *Port* v. *Turton*, 2 Wils. 169.

Secondly.—As to *buying and letting for hire*: This did not constitute a trader within the meaning of any of the repealed statutes. In this respect the law was altered by 6 Geo. IV., cap. 16, in England; and 6

Wm. IV., cap. 14, in Ireland; and now buying "goods and commodities" and letting them for hire, or buying them with intent to let them for hire, will constitute a man a trader, and render him liable to be made a Bankrupt. A livery stable keeper buying horses for the purpose of letting out, and occasionally so doing, even without a horse-dealer's license, might have become a Bankrupt: *Martin* v. *Nightingale*, 11 Moore, 305. But now 12 & 13 Vic., cap. 107; sets at rest all doubt. But a person who buys furniture for the purpose of furnishing apartments, and lets the apartments so furnished: Ex p. *Bowers*, 2 Dea. 99; 3 Mon. & A. 33; or the shareholders of a steam packet, are not traders within this clause: Ex p. *Wiswould*, Mont. 263.

Thirdly.—*As to the workmanship of "Goods and Commodities:"* Purchasing the raw material and manufacturing it into an article for sale, and with a view to profit, was always holden to be a buying and selling within the former statutes, although part of the gain was to be derived from bodily labour: Cooke, 49; *a butcher* who purchased sheep or cattle, and killed them for the purpose of sale, was holden liable to be a Bankrupt: *Dally* v. *Smith*, 4 Burr. 1448; so *a baker* who bought the flour, of which he made his bread, &c.: *Per Cur.* 3 Mod. 330; *a shoemaker* who purchased the leather, &c., of which he made his shoes: *Cramp* v. *Barne*, Cro. Car. 31; *Stanley* v. *Osbaston*, Cro. El. 268; *a tailor* who bought the cloth, of which he made the clothes: per Lord Loughborough in *Parker* v. *Wells*, Cooke, 56; *a milliner* who bought the articles she used in making ladies' dresses, &c. Cooke, 48; *a clothier* who bought the wool or yarn, of which he made his clothes, (ibid.); *a tanner* who purchased the hides he tanned: *Per Cur.* 3 Mod. 330; *a goldsmith:* Cooke, 48: *locksmith*, (ibid.); *nailor*, (ibid.); *smith*, (ibid.); *plumber*, (ibid.); *paper-maker*: Com. Dig., Bankrupt, A.; *painter*, Cooke, 48, who purchased the raw material, which they respectively manufactured and sold. The *sugar-baker* who purchased the raw sugar he refined: Com. Dig., Bankrupt, A.; the *distiller* who purchased the corn or wash, of which he made his spirits: *ibid.* Cooke, 52; the *iron-manufacturer*, who purchased the bar or rod-iron he manufactured into wares, &c. Com. Dig. Bankrupt; and the like have respectively been holden subject to the Bankrupt Laws under the former acts, as *buying and selling* with a view to profit. But if the manufacturer did not buy the raw material—as in the case of the *brick-maker* who made bricks from the earth of his own lands, the *cider-maker*, who manufactured his cider from the apples of his own orchard, &c., (see last page,) he was not holden to be a trader within the former statutes. In the Statute 6 Wm. IV., cap. 14, however, where the words are "all persons who seek their living by the *workmanship* of goods and commodities," which do not certainly imply a buying to be necessary, but, on the contrary, are put in contradistinction to the words "buying and selling," in a preceding part of the clause; it should seem that all persons who manufactured goods for sale, with a view to profit, are within it, whether they purchase the raw material or have it from their own land, &c., without purchase; and by the 12 & 13 Vic. cap. 107, brick makers and alum burners are now made traders, liable to become Bankrupt. See pp. 18, 19, *supra.*

To make a man liable to be a Bankrupt "by buying and selling, or by the workmanship of goods and commodities," it is necessary that there should have been a repeated practice of it, or a commencement of it coupled with an intention to continue it. For a single act of buying and selling, unaccompanied with such intention, will not be sufficient: Cooke, 64; Ex p. *Blackmore*, 6 Ves. 3; Ex p. *Bowes*, 4 Ves. 168; *Hankey* v. *Jones*, Cowp. 748; and see *Bolton* v. *Sowerby*, 11 East. 274; Ex p. *Gallimore*, 2 Rose, 424; *Gale* v. *Halfknight*, 2 Stark, 56; Ex p. *Lavender*, 4 Dea. & C. 487; Ex p. *Brundrett*, 2 Dea. 219; 3 Mon. & A. 50; Ex p. *Wilkes*, 2 Dea. 1; 2 Mon. & A. 667. But if this intention exist, the extent of the trading, whether large or trifling, prior to the Bankruptcy, will be immaterial: *Patman* v. *Vaughan*, 1 T. R. 572; *Bartholomew* v. *Sherwood*, 1 T. R. 573; cit. *Newland* v. *Bell*, 1 Holt, 221; *Holroyd* v. *Gwynne*, 2 Taunt. 176; Ex p. *Wilkes*, 2 Mon. & A. 667. And a declaration by the party of the object of his buying: *Gale* v. *Halfknight*, 2 Stark, 56; or his representing himself as a dealer and buying goods, and offering them in exchange: *Milliken* v. *Brandon*, 1 Car. & P. 380; is admissible evidence of his intention in this respect. If a man be in a line of life, which does not subject him to the Bankrupt Laws, a mere trifling buying and selling, merely collateral to it, even though it yield him a profit, will not render him liable to be a Bankrupt—such as *a schoolmaster* who buys books, &c, and sells them to his scholars: *Valentine* v. *Vaughan*, Peake, 76; *Newton* v. *Trigg*, 1 Salk. 109; or the owner of a mine who buys candles and sells them to his workmen: Ex p. *Gallimore*, 2 Rose, 426; or the keeper of hounds who buys dead horses for his dogs, and sells the skins and bones for a profit: *Summersett* v. *Jarvis*, 3 B. & B. 2; 6 Moore, 56; is not, thereby, liable to be a Bankrupt.

And lastly, the legality or illegality of the buying or selling, &c., makes no difference; it has been holden that a trader may become a Bankrupt, although he have not taken out a license necessary to legalize his trade: *Saunderson* v. *Rowles*, 4 Burr. 2066; *Martin* v. *Nightingale*, 11 Moore, 305; even *a smuggler* might become a Bankrupt, although his trade were obviously illegal: Ex p. *Meymot*, 8 Atk. 169; *Cobb* v. *Symonds*, 1 D. & R. 111; 5 B. & A. 516.

* * *

WHO ARE NOT TRADERS.

As to *Clergymen* being liable to Bankruptcy, the Act 5 Geo. IV., cap. 91, sec. 2, Ir. forbids them "to engage in trade; or buy, to sell again for profit." A clergyman in England, where they are similarly prohibited by 57 Geo. III., c. 99, Eng., was held liable to Bankruptcy; for a man cannot take advantage of the breach of one law to exempt him from the liabilities of another: Ex p. *Meymot*, 1 Atk. 196. It is no trading within the Bankrupt Laws buying upon a system of fraud, where no evidence of selling in the way of business: *Millikin* v. *Brandon*, 1 Car. & P. 380.

"All who seek their living by buying and selling, or by the workmanship of goods and commodities," are thus liable to the Bankrupt Laws, whether they seek their living by buying and selling, &c., &c., either upon their own individual responsibility, or, as the statute has it, "for themselves," or auxiliary, or subordinate to others, as "agents or factors."

The same section (18) of 6 Wm. IV., cap. 14, which defined the traders who were liable to the Bankrupt Laws, contains a provision excepting certain persons from being liable as such, viz.: 1, Farmers; 2, Graziers; 3, Common Labourers, or Workmen for hire; 4, Receivers General of the Taxes; 5, Members of, or Subscribers to, any incorporated mercantile or trading companies, established by charter, or under, or registered in pursuance of act of parliament. In the proviso a precaution is taken to use the words "as such," inasmuch as those persons might, with great justice, appear as subjects of a commission in some other capacity; as, for instance, *buying or selling* either for themselves, or as agents, &c., for others, or *buying and letting for hire*, &c. In 11 & 12 Geo. III.,-cap. 8, Ir., sec. 2, the same precautions were had with respect to farmers, graziers, or drovers of cattle, who were not entitled to any of the benefits therein, unless such persons actually and *bonâ fide* acted as traders liable to the enactments foregoing; so that sometimes these persons came under the Bankrupt Laws.

Farmers.] A farmer purchasing horses as a horse dealer, merely to sell again with a view to profit, and not for farm purposes, was a trader: *Bartholomew* v. *Sherwood*, 1 T. R. 573; and see also *Wright* v. *Bird*, 1 Price, 20, cited therein; Ex p. *Gibbs*, 2 Rose, 38; Ex p. *Newall*, 3 Dea. 333; buying large quantities of potatoes not for use, but for sale at a profit; *Mayo* v. *Archer*, 1 Stra. 513; and see the case of *brick-makers*, pp. 19. 24, *supra;* not so, purchasing for farm use, although selling again: Cooke, 67; although it be only the surplus that is sold: Cooke, 69, 73; nor buying and selling hay, corn, &c., with a view to profit occasionally, yet not seeking his living thereby: *Stewart* v. *Ball*, 2 New. Rep. 78; and see *Patten* v. *Brown*, 7 Taunt. 409. Trading, however, in a very small degree will make a man a trader, if there is enough to draw an inference of a general intention to deal. Trading depending not so much upon the quantity as upon the intention: Ex p. *Moule*, 14 Ves. 602.

2. *Graziers.*] These were excepted, and for the same reason as applies to farmers. The same statute also excepted *drovers*, but not with the same appearance of reason. *A drover* is one who buys cattle at one place and drives them to another in order to have a quick sale: Willes, 590. But *a grazier* generally keeps them some time on his farm, fattening and preparing them for market. See De Gex, 37.

3. *Common Labourers, or workmen for hire.*] These persons neither buy nor sell for their living, nor have they capital or credit; essential ingredients in trading. De Gex, B. L. 37.

4. *Receivers General of Taxes.*] These were excepted lest the king might be defeated of the security which the law gives, above all others, for the recovery of whatever remains in his hands: 2 Bl. Com. 475.

5. *Member of, or Subscriber to, any incorporated mercantile or trading companies, established by charter, or under, or registered in pursuance of Act of Parliament.*] Other statutes made this provision for particular purposes. By 21 & 22 Geo. III., cap. 16, sec. 17, members of the Bank of Ireland as such, are not liable to bankruptcy. Where shares in a company, not established by either charter or act of parliament, were held for no more than six days and no dividends or profits received, party not liable as a trader: Ex p. *Atkinson*, 1 M. D. & D. 300. Also where the purchaser's only object in buying shares was to become a Bankrupt, whilst he had no *bonâ fide* intention of following the business for profit—not a trader: Ex p. *Brundrett*, 2 Dea. 219.

These are the cases specially excepted by the statute, others are excepted by construction of law; as, for instance, a single act of buying and selling will not constitute a trading: Ex p. *Lavender*, 4 D. & C. 484; for in that case he cannot be said to *seek his living*. Repeated practice, and a purpose or a view to derive profit, is necessary: 2 Bl. Com. 476.

CHAPTER II.

ACTS OF BANKRUPTCY.

Acts of Bankruptcy have now become so numerous, that it is thought advisable to reduce them into some order, for the greater facility of interpretation as well as of reference; for this purpose they shall be divided into two classes:

1st.—Acts accompanied by legal fraud, *with intent to defeat or delay* creditors, of which there are twelve in number.
2nd.—Acts which simply raise a presumption of Insolvency, which now amount to seventeen in number, and may be divided into *voluntary* and *involuntary*.
    1st.—*Voluntary*, where the trader, of his own accord, *ex proprio motu*, commits an act declared by the statute to be an act of Bankruptcy.
    2nd.—*Involuntary*, where the act, raising the presumption of Insolvency, is committed by the trader, not by his own will, but by the will of some other person, by process of law.

The Acts of Bankruptcy contained under the first class are twelve in number, and are peculiar to the old statutes. The following is the section of the statute upon which they are founded:—

6 Wm. IV., cap. 14, sec. 19.—"And be it enacted, that if any such trader shall depart this realm, or, being out of this realm, shall remain abroad, or depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods, monies, or chattels to be attached, sequestered, or taken in execution, or shall make, or cause to be made,

Departing the realm, absenting, &c., deemed acts of Bankruptcy.

> either within this realm, or else where, any fraudulent grant, or conveyance of any of his lands, tenements, goods, or chattels, or make, or cause to be made, any fraudulent surrender of any of his copyhold lands or tenements, (situate in England, or Ireland, or elsewhere,) or make, or cause to be made, any fraudulent gift, delivery, or transfer of any of his goods or chattels, every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made, any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his Creditors, shall be deemed to have thereby committed an act of Bankruptcy."

AS TO THE TIME WHEN, ETC.

It should be premised that an act of Bankruptcy, of any kind whatsoever, may be committed after the party has retired from trade: *Baillie* v. *Grant*, 9 Bing. 121; 2 M. & Scott, 193; Ex parte *Bamford*, 15 Ves. 449; Ex parte *Dewdney*, id. 495; Ex parte *Bourne*, 16 Ves. 145; and if, in Ireland, at any time not "more than twelve months prior to the issuing of any commission of Bankrupt against him."—12 & 13 Vic., cap, 107, sec. 108, Ir. But in England it might be at any time previous to sealing the fiat, although after the docket was struck, *Wydom's case*, 14 Ves. 86. 88; *Simpson* v. *Sikes*, 6 M. & S. 295; Ex p. *Dufrene*, 1 Ves. & B. 31; 1 Rose, 333. In March, 1825, a trader in England committed an act of Bankruptcy, sufficient to support a commission issued under the statutes then and there in force. On the 1st of May, these statutes were repealed, and on the 2nd of May, the repealing statute was repealed, and the former statutes thereby revived. In July a commission issued on the act of Bankruptcy committed in March, and it was held to be valid; *Phillips* v. *Hopwood*, 10 B. & C. 39. Upon the same principle, an act of Bankruptcy committed before the stat. 6 Geo. IV., cap. 16; came into operation in England, would not support a commission issued under that statute: *Surtees* v. *Ellison*, 4 Man. & R. 586; *Hewson* v. *Head*, *ibid.*; *Maggs* v. *Hunt*, 12 Moore, 357. Once clearly committed, it cannot after be purged or cancelled: per *Buller*, J. in *Bromley* v. *Mundie*, Bull N. P. 39; Cooke, 121; *Colkett* v. *Freeman*, 2 T. R. 59; but no commission can issue in Ireland grounded on an act committed more than twelve months previously, 12 & 13 Vic., cap. 107, sec. 7. A denial to a Creditor is not purged by his afterwards being admitted, in consequence of his importunity: *Wood* v. *Thwaites*, 3 Esp. 245. So where a trader gave a general order to be denied, and he was denied to a Creditor accordingly, but he immediately overtook the Creditor and told him he was not afraid of him, but of another, this was holden not to have purged or cancelled the Act of Bankruptcy, which was complete at the time of the denial: *Mucklow* v. *May*, 1 Taunt. 479; and see Ex parte *Gardner*, 1 Ves. & B. 45; *Colkett* v. *Freeman*, 2 T. R. 59. But if the act itself be equivocal, circumstances may be given in evidence where *defeat and delay* were the zist to show that it was not done with any such intent: Ex parte *Hall*, 1 Atk. 201; Cooke, 121. Formerly an Act of Bankruptcy concerted between the Bankrupt and the petitioning Creditor would not support a commission: Ex parte *Gouthwatte*, 1 Rose, 87: Ex parte *Brookes*, 1 Buck. 257; *Bamford* v. *Baron*, 2 T. R. 594, cit.; *Eyre* v. *Birkbeck*, id. 395. But a Creditor not privy to such concerted act might avail himself of it:

Ex parte *Bourne*, 16 Ves. 145. The Bankrupt's agreeing to an Act of Bankruptcy at the suggestion of a friend, without any concert with the Creditors was held to be no objection to the fiat: *Roberts* v. *Teasdale*, Peake, N. P. 27; *Simpson* v. *Sikes*, 9 M. & S. 295. But by 6 Wm. IV., cap. 14, sec. 23, no commission shall be deemed invalid, by reason of the Act of Bankruptcy, committed by filing a declaration of insolvency, being concerted or agreed upon between the Bankrupt and any Creditor or other person.

CLASS I.

ACTS WITH INTENT TO DEFEAT AND DELAY.

If any such Trader shall

1. *Depart this Realm.*]—This is one of the Acts of Bankruptcy described in the early English Statutes (Eliz. & James); and in 11 & 12 Geo. III., cap. 8, Ir., in the same words. The word "realm," seems to mean nothing more than the extent of the jurisdiction of the courts of England; for if a trader left England, and went to Ireland, with intent to defeat or delay his Creditors, it was an Act of Bankruptcy, within the clause of the English Acts: *Williams* v. *Nunn*, 1 Taunt. 270; *Windham* v. *Patterson*, 1 Stark. 144; and if a trader residing in Ireland, or elsewhere, went to England upon some temporary business, and again quit England to avoid being arrested by a Creditor, it was a departing the "realm," within the meaning of the statute in force in England: *Williams* v. *Nunn*, 1 Taunt. 270; 1 Camp. 152; *Holroyd* v. *Gwynne*, 2 Taunt. 176. The departure must be with intent to defeat or delay his Creditors, in the recovery of their debts. The departure of a man in embarrassed circumstances is strong, but not conclusive, evidence of the intention: Ex p. *Osborne*, 2 V. & B. 177; 1 Rose, 387.

2. *Or being out of this realm, shall remain abroad.*]—This, it seems, was not an Act of Bankruptcy in England previous to 6 Geo. IV., cap. 16,1 Mon. B. L. 23; but see *Windham* v. *Patterson*, 1 Stark, 147; 4 Camp. 289; neither was it so in Ireland, previous to 6 Wm. IV., cap. 14. Since that Act of Geo. IV., if a trader go abroad, leaving a general power of attorney to a person to act for him, but makes no provision for payment of bills which become due in his absence, he commits an Act of Bankruptcy, as the inevitable consequence of his absence is delay of his Creditors: Ex parte *Kilner*, 2 Dea, 326; 3 Mon. & A. 722; also, when a trader departs the realm, from a proper motive, but upon discovery of his embarrassments, remains abroad, with intent to delay his Creditors, it is an Act of Bankruptcy. But the remaining abroad must be with intent to defeat or delay Creditors, in the recovery of their debts.

3. *Or depart from his dwelling house.*]—This is one of the Acts of Bankruptcy in the early English Statutes, and 11 & 12 Geo. III., cap. 8, Ir., and described in the same words. A trader shutting up his shop for

two days, without making any provision for payment of Creditors, who might apply for their debts, commits an Act of Bankruptcy: Ex parte *Austen*, 2 Dea. 533. Departing from the parties' place of business, although he have a dwelling house elsewhere, is, it seems, an Act of Bankruptcy, within this clause of the statute: *Judine* v. *Da Cossen*, 1 New Rep. 234; *Spencer* v. *Billing*, 1 Camp. 310; or, at all events, within the next clause of it, namely, "otherwise absenting himself," and although no Creditor actually calls during the absence: *Hammond* v. *Hincks*, 5 Esp. 139. A trader, who has no settled home or counting house, taking up a temporary abode at a public house in the neighbourhood of his business, commits an Act of Bankruptcy by departing from such public house, *with intent* to defeat or delay his Creditors: *Holroyd* v. *Gwynne*, 2 Taunt. 176. A trader departing from his house, with intent to delay his Creditors, though upon a groundless apprehension, is an Act of Bankruptcy: Ex parte *Bamford*, 15 Ves. 449; *Rouch* v. *Great Western Railway Company*, 4 Per. & D. 686; 1 Ad. & E. N. S. 51. But the departure must be voluntary: *Maylin* v. *Eyloe*, 2 Stra. 809; and not compulsory, as in case of an arrest: *Phillips* v. *Sheriff of Essex*, Green, 53. A Bankrupt, being called on by appointment, left the room, and his wife told the Creditor he was gone out—held to be an Act of Bankruptcy: *Charrington* v. *Browne*, 11 Moore, 341. The length of absence is immaterial, the Act of Bankruptcy being complete the moment of leaving the house: *Holroyd* v. *Gwynne*, 2 Taunt. 176; *Spencer* v. *Billing*, 3 Camp. 312; *Maylin* v. *Eyloe*, 2 Str. 809. The departure must be with intent to defeat or delay Creditors *in the recovery* of their debts: *Fowler* v. *Padget*, 7 T. R. 509.

4. *Or otherwise absent himself.*]—This was so in England under 13 Eliz. cap. 7, sec. 1; 1 Jac. I. c. 15, sec. 2; and in Ireland under 11 & 12 Geo. III., cap. 8, sec. 1. A trader having escaped from the arrest of an officer, into a neighbour's house, was denied to the officer enquiring for him, and the door was fastened against him; and whilst there, the trader declared, that he remained there not so much through fear of the officer, (for that particular debt was paid) but of other Creditors. As soon as it became dark, he went home—held, an absenting within the meaning of the Statute, and an Act of Bankruptcy: *Bayley* v. *Schofield*, 1 M. & S. 338. A trader, secretly withdrawing himself after arrest, is absenting himself, within the Statute: *Phillips* v. *Peake*, Greene, 52. And where a trader went into a neighbour's shop, and said he expected momentarily to be arrested; and whilst there, he was told that the sheriff's officer was going towards his house, upon which he went immediately into the back shop, and concealed himself, until he was told that the officer had gone away, when he answered, "Thank God! I will now go in:" and he went home accordingly—holden to be an absenting himself within the Statute, and an Act of Bankruptcy: *Chenoweth* v. *Hay*, 1 M. & S. 676. A trader's Creditors called upon him, and they were admitted; after speaking to them, he went out on pretence of getting money to pay them, but did not return until he knew they were gone—held to be absenting himself within the Statute, and an Act of Bank-

ruptcy: *Bigg* v. *Spooner*, 2 Esp. 651; see also the cases under the preceding act of Bankruptcy. A trader, having no settled dwelling, absenting himself from his usual place of abode, commits an act of Bankruptcy: Com. Dig. Bankrupt, C. 1. Thus, where a vendor of a newspaper, whose habit was to attend the Royal Exchange to collect news, having retired therefrom upon the approach of a Creditor, told a friend to say he was not there: held an absenting himself within the statute, and an act of Bankruptcy: *Gimmingham* v. *Laing*, 6 Taunt. 534. A trader absenting himself from any place, with intent to delay a Creditor, is an act of Bankruptcy: *Hallan* v. *Homer*, 1 Car. & P. 108; *Curties* v. *Willes*, 1 Car. & P. 211. Absenting oneself from his counting house, but desiring his clerk to say he was there, when, in fact, he was absent, is an act of Bankruptcy: *Shannon* v. *Owen*, 1 Man. & R. 392, *n.*; and see *Gimmingham* v. *Laing*, 6 Taunt. 534. Making an appointment with a Creditor, to meet one's Creditors, at any particular place, *(not the residence of the Creditor,)* and breaking that appointment, with a view to delay the Creditor, is an act of Bankruptcy; but *semble* not, if the appointment is to meet at the Creditor's residence: *Lees* v. *Marton*, 1 Mood. & R. 210. So where a Creditor concurs with the solicitor of an Insolvent trader, for a meeting of Creditors—failing to attend this meeting, although he sends his solicitor in his stead, is an act of Bankruptcy: Ex p. *Beer*, 5 Jur. 104; 1 M. D. & D. 390. Or if, attending a meeting of Creditors, he is desired to withdraw, and, upon being served with a writ, he abruptly leaves the place of meeting for an hour, and does not return until the meeting has broken up: Ex p. *Dean*, 2 M. D. & D. 127—and if, in dread of arrest, he abstains from going to a place where, otherwise, he would have gone: *Bobson* v. *Rolls*, 9 Bing. 668; 2 M. & Scott, 786—but failing in a mere appointment to meet one of his creditors at a given place, is not an act of Bankruptcy: *Tucker* v. *Jones*, 2 Bing. 2; Ex. p. *Lavender*, 4 Dea & C. 484. The absenting must be voluntary, and not in consequence of arrest: *Phillips* v. *Peake*, Green, 52; and see 3 Camp. 530, *n.* Its duration seems immaterial. But the intent to defeat or delay the Creditors in the recovery of their debts, must exist.

5. *Or begin to keep his house.*]—This is also one of the acts of Bankruptcy created by statutes 13 Eliz. cap. 7, sec. 1, Eng., and 1 Jac. I. cap. 15, sec. 2, Eng.; and 11 & 12 Geo. III., cap. 8, sec. 1, Ir., and described in the same manner. Withdrawing from a part of the house where a trader was generally seen, and was free of access, to a more retired part, to avoid personal applications for money, is a beginning to keep house within this clause: *Dudley* v. *Vaughan*, 1 Camp. 271; *Key* v. *Shaw*, 8 Bing. 320; 1 M. & Scott, 462; so not going to his country house, nor to the town near which he lived; sending for his papers to his house; not going out, &c., are circumstances from which a beginning to keep house may be inferred: see 16 Ves. 149. Or if a man, not having a house of his own, keep within the house of another; or in chamber; or on board ship—or, if a miller keep within his mill, or the like, this is an act of Bankruptcy within this clause: Stone, 9, 123. A trader used occasionally come to London, and stay a day or two at a friend's house, where he was

in the habit of writing letters, and ordering and receiving goods. On a particular day, he requested his friend not to inform a Creditor, who lived close by, that he was in town, as he would be teasing him for his money. The Creditor called at the house upon business; and the trader went into a back warehouse, for ten minutes, to avoid seeing him. This was holden to be a beginning to keep house, and an act of Bankruptcy: *Curtis* v. *Willes*, 4 D. & R. 224. A country dealer being at his friend's house in London, where he was accustomed to visit, and concealing himself, to avoid a Creditor, commits an act of Bankruptcy: *Hawkins* v. *Howard*, 1 R. & M. 64. Being in the rules of the King's Bench, but coming to his own house out of the rules, and there denied to the clerk of a Creditor, held to be an act of Bankruptcy: *Hughes* v. *Gilman*, 2 Car. & P. 32; 10 Moore, 480. A denial to a Creditor calling at the Bankrupt's lodging for payment, not his usual place of business, is beginning to keep house. For a Creditor has a right to call on his Debtor where he pleases: *Park* v. *Prosser*, 1 Car. & P. 176. But a denial to a Creditor on a Sunday, is not an act of Bankruptcy, although the Creditor calls by appointment for payment: Ex p. *Preston*, 2 V. & B. 311; 2 Rose, 21. A denial to a collector of king's taxes, is as much an act of Bankruptcy, as a denial to any other Creditor: *Saunderson* v. *Laforest*, 1 Car. & P. 46. 336. Closing the doors and shutters of a bank, is a beginning to keep house, though it is not the domicile of the bankers: *Cumming* v. *Bailey*, 4 M. & P. 36; 6 Bing. 363; but see Ex p. *Mavor*, 19 Ves. 543; and see (in List of Traders) *Bankers*, p. 18, *supra*. Ordering to be generally denied to one Creditor in particular, or all Creditors, or every one that may call, is sufficient to raise a presumption of beginning to keep house, within the meaning of this clause, and the usual evidence given of it: *Mucklow* v. *May*, 1 Taunt. 479; *Bayley* v. *Schofield*, 1 M. & S. 338; *Lloyd* v. *Heathcote*, 2 B. & B. 388; *Lazarus* v. *Waithman*, 5 Moore, 313; per Lord Mansfield in *Round* v. *Byde*, Cooke, 110; and see Ex p. *Bamford*, 16 Ves. 452; *Harvey* v. *Ramsbottom*, 2 D. & R. 145; 1 B. & C. 55; *Deffie* v. *Dessanges*, 8 Taunt. 671. Nor is a denial in pursuance thereof, absolutely necessary to constitute the act of Bankruptcy: *Harvey* v. *Ramsbottom*, 2 D. & R. 142; 1 B. & C. 55; *Lloyd* v. *Heathcote*, 2 B. & B. 338—formerly it was held otherwise: *Garrett* v. *Moule*, 5 T. R. 575; *Hawkes* v. *Saunders*, Cooke, 90; *Jeffs* v. *Smith*, 2 Taunt. 401; *Dudley* v. *Vaughan*, 1 Camp. 271; *Bramley* v. *Mundee*, Bull, N. P. 39; *Jackman* v. *Nightingale*, id. 40; *Barnard* v. *Vaughan*, 8 T. R. 149; Ex p. *Levy*, 7 Vin. Abr. 61, pl. 14; Ex p. *White*, 3 Ves. & B. 129; Ex p. *Harris*, 2 Rose, 67. But some corroborating fact should appear, as the shutting up shop, or retreating to a distant part of the house: *Hare* v. *Waring*, 3 M. & W. 362. A denial to a Creditor, although not calling for payment of his debt, is an act of Bankruptcy, if made under a conception that the object was to demand payment: Ex p. *White*, 3 V. & B. 128, S. C.; Ex p. *Harris*, 2 Rose, 67. And where the person desired that the trader might be told he called, in consequence of a certain bill of exchange (mentioning the parties) being dishonoured, and was denied the trader, believing him to be a Creditor, it was held to be an act of Bankruptcy: *Bleasby* v. *Crossley*, 2 Car. & P.

213; 11 Moore, 327. But being actually denied to a Creditor, if not in pursuance of any commands given by him, is no evidence of a keeping house within this clause, although the trader subsequently approve of it: Ex p. *Foster*, 1 Rose, 50; 17 Ves. 416; and see *Dudley* v. *Vaughan*, 1 Camp. 271; but it has been recently held, that if he hears the denial, and does not come forward, it is an act of Bankruptcy, if done with intent to delay Creditors; but, if done with a legitimate excuse, as being engaged in important business, it is otherwise: *Smith* v. *Moon*, Mood. & M. 458. It is no matter how long or how short a time he keeps house, whether an hour or a day: see Palm. 325; but it must be with intent to defeat or delay the Creditors.

6. *Or suffer himself to be arrested for any debt not due.*]—This is another of the acts of Bankruptcy created by statute 13 Eliz. c. 7, s. 1, Eng., and re-enacted by statute 1 Jac. I., 15, s. 2, Eng.; and afterwards contained in 11 & 12 Geo. III., c. 8, s. 1, Ir. It must be done with intent to defeat or delay the Creditors in the recovery of their debts.

7. *Or yield himself to prison.*]—And this also was created by 13 Eliz. c. 7, s. 1, Eng., and re-enacted by 1 Jac. I., c. 15, s. 2, Eng.; and contained in 11 & 12 Geo. III., c. 8. s. 1, Ir. A trader chose rather to go to prison, than pay a sum of £28. although he had it at the time, in order, as he said, to compel a composition from his Creditors; held, an act of Bankruptcy within the clause: Ex p. *Barton*, 7 Vin. Abr. 62. But it must be done with intent to defeat or delay the Creditors, in the recovery of their debts.

8. *Or suffer himself to be outlawed.*]—This was in 11 & 12 Geo. III., c. 8, s. 1, Ir., and copied from the early English statutes. But it must be an outlawry suffered with intent to defeat or delay the Creditors, in the recovery of their debts.

9. *Or procure himself to be arrested, or his goods, monies, or chattels to be attached, sequestrated, or taken in execution.*]—There was a similar clause in statute 1 Jac. I., c. 15, s. 2, Eng., but there the words, "or taken in execution," were omitted, and, therefore, it was holden, that a fraudulent payment, and execution thereupon, were not within the meaning of that Act: *Harman* v. *Spottiswoode*, Cooke; *Clavey* v. *Hayley*, Cowp. 427. For which reason the words "or taken in execution," were introduced into the statute 6 Geo. IV., c. 16, Eng., from which we have copied it into 6 Wm. IV., c. 14, Ir. The word "attached," means that species of attachment by which *suits* are commenced, such as the foreign attachment by the custom of London and Bristol, or the like: per Lord Mansfield, in *Clavey* v. *Hayley*, Cowp. 411; and see Cullen, 41, 42. But all these must appear to have been procured by the Bankrupt, with intent to defeat or delay his Creditors in the recovery of their debts.

10. *Or make, or cause to be made, either within the realm, or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods or chattels.*]—The words of a similar clause in statute 1 Jac. I., c. 15, s. 2, were "or make, or cause to be made, any fraudulent conveyance of his, her, or their lands, tenements, goods or chattels;" the words "either within this realm, or elsewhere," were introduced into the statute 6 Geo. IV.,

c. 16, Eng., (from which we have copied 6 Wm. IV., c. 14, Ir.,) because it had been decided that the above clause in statute 1 Jac. I., c. 15, s. 2, did not extend to conveyances executed out of England: *English* v. *Grant*, 5 T. R. 530; *Norden* v. *James*, Dick. 533. In the statute of James, as in 6 Geo. IV., c. 16, Eng., and 6 Wm., IV., c. 14, Ir., the words are "any fraudulent conveyance," and under this head were classed all the cases of fraudulent conveyances, that is to say, voluntary conveyances without a valuable consideration, which are rendered void as against Creditors, by the statutes 13 Eliz. c. 5, and 27 Eliz. c. 4: *Hassels* v. *Simpson*, 1 Doug. 88; and see *Whitwell* v *Thompson*, 1 Esp. 68; and all grants and conveyances which a court of equity would declare fraudulent—*Jacob* v. *Sheppard*, 1 Burr. 471; *Unwin* v. *Oliver*, 481—as well as all cases which either appear from the facts themselves to be, or from the conclusion of law, arising from these facts, would be deemed to be fraudulent as against third parties, however fair they might be as between the parties themselves—*Worsley* v. *Demattos*, 1 Burr. 467, 474; and see under this head, *passim*. Again, the words in the above statute of James are, "any fraudulent conveyance," which has been always deemed to mean a conveyance by deed only: *Martin* v. *Pewtress*, 4 Burr. 2478, 80, 82; *Rust* v. *Cowper*, Cowp. 633, 635; 1 Doug. 87, *cit.*; *Alderson* v. *Temple*, 4 Burr. 2235; *Harman* v. *Fisher*, Cowp. 117; *Manton* v. *Moore*, 7 T. R. 71; *Jolly* v. *Walle*, 3 Esp. 228; and the deed must have been complete and valid; therefore, such a deed, not properly stamped—see *Whitwell* v. *Dimsdale*, Peake, N. P. C. 168—or not executed by a party who must have joined in it, in order to render it complete and effective—see *Dutton* v. *Morrisson*, 17 Ves. 193; *Antram* v. *Chase*, 15 East, 212; *Beech* v. *Gooch*, 1 Holt. 15—would not have been an act of Bankruptcy. However, it has been held that a conveyance of the above description was an act of Bankruptcy, although after executing it the Bankrupt retained it in his possession, and continued to carry on his trade for three years afterwards, before a commission issued: *Pulling* v. *Tucker*, 4 B. & A. 382; and see *Grugeon* v. *Gerrard*, 4 Y. & C. 130. But in the present statute the words are, "any grant or conveyance of lands, goods," &c., and a grant of goods, however untechnical it may sound, may possibly be construed to mean *any* assignment of goods, by deed or otherwise. All doubts, however, upon this matter, are removed by the subsequent phrase in the section, namely, *or make, or cause to be made, any fraudulent gift*, &c. see Acts of B. No. 11, p. 39, *infra*. The words of the statute of 1 James I., c. 15, s. 2, are, "any fraudulent conveyance of his lands, tenements, goods, or chattels," which is supposed to mean all conveyances, by a trader, of the whole of his property, be it for a past consideration, or for a debt already incurred—*Newton* v *Chantler*, 7 East. 138; *Wilson* v. *Day*, 2 Burr. 827; *Hooper* v. *Smith*, 1 W. Bl. 441; *Siebert* v. *Spooner*, 1 M. & W. 714—or a present consideration, as to indemnify a surety, or secure a person about to advance money—*Worsley* v. *Demattos*, 1 Burr. 467; *Butcher* v. *Easto*, 1 Doug. 295; *Hassells* v. *Simpson*, 1 Doug. 88, *n.*; Cook, 104; *Hoffman* v. *Pitt*, 5 Esp. 80: or, without consideration, *vide supra*, and whether the grantor afterwards retained possession of the property or not—*Worsley* v. *Demattos*, 1 Burr. 467; *Wilson* v. *Day*, 2 Burr. 827; *Butcher* v. *Easto*, 1 Doug. 295; *Newton* v. *Chantler*, *supra*—and this, although the conveyance were made even three or more years before the docket was struck—*Pulling* v. *Tucker*, 4 B. & A. 382; *Law* v. *Skinner*, 2 W. Bl. 996; *Hassels* v. *Simpson*, 1 Doug. 89, *n.* Also where the conveyance contained a colourable exception of a comparatively small part of the property: *Gayner's case*, 1 Burr. 477; *Law* v. *Skinner*, 2 W. Bl. 996; *Compton* v *Bedford*, 1 W. Bl. 362; a conveyance of all his property to trustees in trust for all his Creditors—*Tappenden* v. *Burgess*, 4 East. 230; *Dutton* v. *Morrisson*, 17 Ves. 139; *Kettle* v. *Hammond*, Cooke, 106; Bull N. P. 40; *Harman* v. *Fisher*, Cowp. 123; Ex p. *Scudamore*, 3 Ves. 84; *Newton* v. *Chantler*, 7 East. 138; *Buck* v. *Gooch*, 4 Camp. 232; *Jolly* v. *Wallis*, 3 Esp. 229; *Anderson* v. *Temple*, 4 Burr. 2240—where no intent to delay or defeat Creditors, yet where it be the necessary consequence of an assignment of all his property, the law will presume intent: *Stewart* v. *Moody*, 1 Scott, 777; *Siebert* v. *Spooner*. 1 M. & W. 714; *Chase* v. *Goble*, 3 Scott, N. R. 245. Under the statute of James, this was an act of Bankruptcy, but could only be set up by those who had not signed the deed: *Eckhardt* v. *Wilson*, 8 T. R. 140; *Jackson* v. *Irvine*, 2 Camp. 49; *Bamford* v. *Baron*, 2 T. R. 594, *n.*; Ex p. *Shaw*, 1 Madd. 598; Ex p. *Kilner*, Buck. 104; and see *Doe* v. *Anderson*, 5 M. & S. 162. So also as to a conveyance in trust for Creditors, excepting one or more therein specified—*Pulling* v. *Tucker*, 4 B. & A. 382; *Gayner's case*, 1 Burr. 477, *cit.*; *Butcher* v. *Easto*, 1 Doug. 294; and see 2 Cowp. 633—although containing a proviso to be void, if in the event of all Creditors not signing—*Dutton* v. *Morrisson*, 17 Ves. 191—or to be void if the trustee think fit to avoid it: *Tappenden* v. *Burgess*, 4 East. 230—and although the assignment was made for the purpose of committing an act of Bankruptcy—*Simpson* v. *Sykes*, 6 M. & S. 295—and although the deed be not executed by the trustees, or any of the Creditors, nor acted upon—*Botcherly* v. *Lancaster*, 3 N. and Man. 383; 1 Ad. & E. 77—but if the assignment purports to be by *partners* jointly, and one partner does not execute, it is not an act of Bankruptcy: *Dutton* v. *Morrisson*, 17 Ves. 193. And a sale of goods is not fraudulent within this section, unless the purchaser is cognizant of the fraud: *Harwood* v *Bartlett*, 8 Scott, 171; 6 Bing. N. C. 61. So, likewise, a sale to a *bonâ fide* purchaser of the whole of a stock in trade, is no act of Bankruptcy, although the intention is to abscond with the proceeds: *Baxter* v. *Pritchard*, 3 N. & Man. 638; 1 Ad. & E. 456. Whoever seeks to avail himself of the sale, as an act of Bankruptcy, must show some facts implying fraud: *Rose* v. *Haycock*, 3 N. & Man. 644; 1 Ad. & E. 460. So also where a conveyance of one's entire property to a canal company, upon advancing money to pay all one's debts, held not to be an act of Bankruptcy, as a fraudulent conveyance: *Manton* v. *Moore*, 7 T. R. 67. A conveyance of a part only of his property, if made in contemplation of Bankruptcy, would be an act of Bankruptcy—*Linton* v. *Bartlett*, 3 Wils. 47; *Devon* v. *Watts*, 1 Doug. 86; *Round* v. *Byde*, Cooke, 110; *Whitwell* v. *Thompson*, 1 Esp. 68; *Morgan* v. *Horse-*

man, 3 Taunt. 241; *Shaw* v. *Jackson*, 4 East, 201; and see *Law* v. *Skinner*, 2 Bl. 996—otherwise not, if the conveyance were *bonâ fide*, and without fraud—*Jacob* v. *Sheppard*, 1 Burr. 478; *Unwin* v. *Oliver*, 1 Burr. 481; *Wheelwright* v. *Jackson*, 5 Taunt. 109; *Manton* v. *Moore*, 7 T. R. 67; *Chase* v. *Goble*, 3 Scott, N. R. 245. The conveyance, to come within the meaning of the statute of James, which is the same in this instance as 6 Wm. IV. c. 14, Ir., must have been *by the bankrupt*—*Cole* v. *Davies*, 1 Lord Raym. 725—to some Creditor or other person. Secretly removing one's goods out of the house, to prevent execution, was not an act of Bankruptcy: see *Whitwell* v. *Thompson*, 1 Esp. 68. And under the 6 Geo. IV. cap. 16, sec. 3, Eng., which coincides with 6 Wm. IV. cap. 14, sec. 19, Ir., not only a conveyance of all the Bankrupt's property, even in trust for Creditors, or a conveyance of part, in contemplation of Bankruptcy—*Gibbons* v. *Phillips*, 7 B. & C. 529—are acts of Bankruptcy, as upon the above Statute of James; but also all other grants or conveyances of any part of his property, if made with intent to defeat or delay the Creditors in the recovery of their debts: but a conveyance of part of the property in trust, to sell and dispose of it as he shall direct, is not an act of Bankruptcy: *Robinson* v. *Carrington*, 1 Mon. & A. 1. After acts of Bankruptcy, a conveyance of freehold and leasehold estates being made upon trust, for sale or mortgage and to apply the proceeds as the trustee should direct, it appeared that the purpose of the trust was a conversion of the property, with a view to an arrangement with the Creditors, to which, on account of his health, the trader was personally incompetent to carry on, such deed was held not to be an act of Bankruptcy: *Greenwood* v. *Churchill*, 1 M. & K, 546. A soap manufacturer, without assigning the entire of his property, assigned to his bankers his leasehold premises, with all his stock in trade, utensils and effects therein, also a policy of assurance, as a security for monies advanced, or to be advanced, with a power of sale, and a proviso that the trader should retain possession until default: held, that the deed being *bonâ fide*, was not an act of Bankruptcy: *Carr* v. *Burdiss*, 1 C. M. & R. 443. Two partners, being insolvent, entered into a composition deed to pay 4s. 6d. in the pound, by instalments, the last instalment to operate as a release, and the traders retained possession of their stock in trade; and by the same deed one of the partners, as a security for payment of the residue of the debt, assigned a policy of assurance upon his life for the entire of his separate property: this was held not to be a fraudulent conveyance, so as to constitute an act of Bankruptcy: *Abbott* v. *Burbage*, 2 Scott, 656; 2 Bing. N. C. 444. But if a trader convey away to such an extent as to prevent his continuing business, or as to render him insolvent, it is an act of Bankruptcy; but those relying thereon must show that the act would have that effect: *Wedge* v. *Newlin*, 4 B. & Ad. 831; and see *Rose* v. *Haycock*, 3 N. & Man. 644. The assignment of book debts—1 Mont. B. L. 31, *n.* but see Ex p. *Richardson*, 14 Ves. 186—or of policies of insurance on the trader's life—*Grogan* v. *Cooke*, 2 B. & P. 230—are not acts of Bankruptcy, if the trader has other property. Formerly, under the statute of James, it should seem necessary, in order to render a conveyance of property an act of Bankruptcy, that it should have been a voluntary, and not a compulsory, conveyance: see *Crosby* v. *Crouch*, 2 Camp. 166; 11 East. 256; and see Cooke, 102: and so, under 6 Geo. IV. c. 16, Eng.; see Arch. B. L. 66; and if so, then under 6 Wm. IV. c. 14, Ir. And likewise where the Bankrupt gave security upon his property to a Creditor, under even groundless apprehension of legal process: *Thompson* v. *Freeman*, 1 T. R. 155; or under the pressing importunity of the Creditor: Ex p. *Scudamore*, 3 Ves. 85; *Arbouin* v. *Hanbury*, 1 Holt, N. P. 575, it was held valid. Or being under the influence of the fear of legal process at the suit of the Creditor: *Butcher* v. *Easto*, Doug. 295; *Thornton* v. *Hargreaves*, 7 East. 549—at the time of the conveyance; and see *De Tastett* v. *Carroll*, 1 Stark. 88; Ex p. *De Tastett*, Mon. 146. A deed executed manifestly in contemplation of Bankruptcy, was held fraudulent, and an act of Bankruptcy, notwithstanding the trader's being under arrest at the suit of his Creditor: *Morgan* v. *Horsman*, 3 Taunt, 241; *Singleton* v. *Butler*, 1 B. & P. 283; *Newton* v. *Chantler*, 7 East. 138. Lastly, by 6 Wm. IV. c. 14, s. 20, Ir., where any such trader shall, after this act shall have come into effect, execute any conveyance or assignment, by deed to a trustee or trustees, of all his estate and effects, for the benefit of all the Creditors of such trader, the execution of such deed shall not be deemed an act of Bankruptcy, unless a commission issue against such trader within six calendar months from the execution thereof by such trader; provided that such deed shall be executed by every such trustee within fifteen days after the execution thereof by the said trader; and that the execution by such trader, and by every such trustee, be attested by an attorney or solicitor, and that notice be given within two months after the execution thereof by such trader, in case such trader reside in Dublin, or within forty miles theroof, in the Dublin Gazette, and also in two Dublin daily newspapers; and in case such trader does not reside within forty miles of Dublin, then in the Dublin Gazette, and also in one Dublin daily newspaper, and one provincial newspaper published near to such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode, respectively, of every such trustee, and of such attorney or solicitor.

11. *Or make, or cause to be made, any fraudulent surrender of any of his copyhold lands or tenements, situate in England, or Ireland, or elsewhere.*]—This is here inserted merely because it is so in the Act. We have no copyholds in Ireland, save it is believed in two instances; but even in England, before 6 Geo. IV., this was held not to be an act of Bankruptcy, inasmuch as it could not be done with intent to *defeat or delay*, as Creditors could not have execution of copyhold lands: Ex p. *Cockshot*, 2. Bro. 502.

12. *Or make, or cause to be made, any fraudulent gift, delivery, or transfer of any of his goods or chattels.*]—This is the last of the acts of Bankruptcy of the First Class. It includes mere manual delivery or trnasfer, as well as conveyance by deed, &c., which was not provided for by the earlier statutes. In other respects this clause requires the same construction as the tenth act of Bankruptcy, (see p. 35,) and must be done in

contemplation of Bankruptcy: *Fidgeon* v. *Sharpe*, 1 Marsh, 196; Taunt. 539; *Wheelwright* v. *Jackson*, Taunt. 109. Under this clause a bill of exchange is a chattel, and its fraudulent delivery, or transfer, will constitute an act of Bankruptcy, *Cumming* v. *Bailey*, 6 Bing. 363. A Bankrupt delivering goods to his agent in contemplation of Bankruptcy, for the purpose of selling them for the benefit of both Bankrupt and agent, is not a fraudulent delivery, as the goods in the hands of the agent, must be taken as still in the holding of the Bankrupt: *Harwood* v. *Bartlett*, 8 Scott, 171; 6 Bing. N. C. 61. So a mere sale of property, or exchange of it for other property, would not be an act of Bankruptcy: *Whitwell* v. *Thompson*, 1 Esp. 68; and see *Rust* v. *Cooper*, Cowp. 629; *Martin* v. *Pewtress*, 4 Burr. 2478; and see *Burney* v. *Davison*, 4 Moore, 127; *Berney* v. *Viner*, 4 Moore, 322.

Every such trader doing, suffering, procuring, executing, permitting, making, or causing to be made, any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his Creditors, shall be deemed to have thereby committed an act of Bankruptcy.]—In the above twelve instances, we are given The Acts. Here we are given the *Intention* with which those acts must be accompanied. The act may be innocent, but committed with the intent here set forth, the whole of the trader's estate, and effects, become subject to the operation of the Laws of Bankruptcy; and if the mere intent to defeat or delay Creditors, actually existed in the mind of the trader, at the time the act was committed, it is no matter whether any Creditor was thereby defeated, or delayed, or not: *Robertson* v. *Liddle*, 8 East. 487; *Wydown's case*, 14 Ves. 86; *Chenoweth* v. *Hay*, 1 M. & S. 676; *Aldridge* v. *Ireland*, 1 Taunt. 273; *Colkett* v. *Freeman*, 2 T. R. 59; Ex p. *White*, 3 Ves. & B. 128; Ex p. *Harris*, 2 Rose, 27; *Bayley* v. *Schofield*, 1 M. & S. 338; *Hammond* v. *Hincks*, 5 Esp. 139; *Williams* v. *Nunn*, 1 Taunt, 270; and see *Harvey* v. *Ramsbottom*, 2 D. & R. 142; 1 B. & C. 55. The intent can be evidenced only by the trader's acts, or admissions. If a man admit that he commited the act with the intent of defeating, or delaying his Creditor's in the recovery of their debts, it is almost conclusive evidence of it, and can scarcely be explained away, see *Rawson* v. *Hay*, 2 Bing. 99; any thing said, or written, by the Bankrupt, before his Bankruptcy, tending to shew the intent of an act equivocal in itself, is admissible: *Smith* v. *Cramer*, 1 Scott, 541; *Scott* v. *Thomas*, 6 Car. & P. 611. If the act be accompanied by circumstances from which the intent may fairly be presumed, it will be sufficient. A trader wrote to his son at his manufactory, that he was unable to meet his engagements with his Creditor's, and requested to be denied to any that might call, and shortly after left the house, and was absent from his home and place of business, the whole of that and the next day, and such absence unaccounted for; this was held to be an act of Bankruptcy—*Johnson* v. *Woolf*, 2 Scott, 372—and although no Creditor is actually delayed: *Rouch* v. *Great Western Railway Company*, 4 Per. & D. 686; 1 Ad. & E. N. S. 5. Yet it is not always because a Creditor is delayed by the act, that such is evidence of the trader's intention in committing it: Ex p. *Osborne*, 2 Ves. & B. 177; *Fowler* v.

Padgett, 7 T. R. 509. But if it be a necessary consequence of the act, that Creditors be defeated or delayed, this is presumptive evidence of his intentions to defeat or delay them: *Ramsbottom* v. *Lewis*, 1 Camp. 279; *Holroyd* v. *Whitehead*, 3 Camp. 530; Ex. p. *Kilner*, 2 Dea, 325; 3 Mon. & A. 722. Even although it appears that he had other ostensible reasons for it, see *Woodie's case*, Bull, N. P. 39; *Raikes* v. *Poreau*, Cooke, 85; and dict. per *Lawrence*, *J.*, in *Fowler* v. *Padgett*, 7 T. R, 156. So if done to avoid an arrest—*Williams* v. *Nunn*, 1 Taunt. 270; *Holyrood* v. *Gwynne*, 2 Taunt. 176; *Warner* v. *Barber*, 1 Holt, 175; *Chenoweth* v. *Hay*, 1 M. & S. 676; *Harvey* v. *Ramsbottom*, 2 D. & R. 142; 1 B. & C. 55; Ex p. *Bamford*, 15 Ves. 459—even although merely for the purpose of gaining the Term: *Maylin* v. *Eyloe*, 2 Str. 809. Or if done to avoid the importunity of Creditors: *Ramsbottom* v. *Lewis*, 1 Camp. 279; *Dudley* v. *Vaughan*, Id. 271; but see *Vincent* v. *Prater*, 4 Taunt. 603. Or if done under a pretence which is false, see *Capper* v. *Dessanges*, 3 Moore, 4. Or if a trader receive a Creditor, and leave his house, under a pretence of going for money to pay him, but instead of doing so, go to a billiard-table, and do not return for many hours afterwards—*Bigg* v. *Spooner*, 2 Esp. 651—or make an appointment to meet and pay his Creditor, and fail to keep it: *Widger* v. *Browning*, 9 Dow. & R. 306. These, and the like, are circumstances from which it may be fairly presumed that a trader's intention was to delay his Creditors, for the necessary consequence of them, was that the Creditors must have been delayed by them. But strong presumption may be rebutted by shewing that the trader did not, at the time, entertain the intention imputed to him. For instance, if he prove, upon departing the realm, he left a partner behind him in the country—*Ramsbottom* v. *Lewis*, 1 Camp. 272—or that his presence abroad was absolutely necessary, in order to look after his concerns there—Ex p. *Mutric*, 5 Ves. 574; *Warner* v. *Barber*, 1 Holt. 175; and see *Fowler* v. *Padgett*, 7 T. R. 509—or that previous to his departure, he made arrangementst hat the interests of his Creditors should be attended to during his absence—*Ramsbottom* v. *Lewis*, 1 Camp, 277; and see *Waridham* v. *Patterson*, 1 Stark, 144—or that he advertised in the public papers the time when his ship would sail, that he was ready to take shipments—Ex p. *Osborne*, 2 Ves. & B. 177; or in the case of a denial to a Creditor on a Sunday—Ex p. *Preston*, 2 Ves. & B. 311; 2 Rose, 21—or that the trader was at dinner, or engaged in some particular business, or that the time was unseasonable—*Smith* v. *Currie*, 3 Camp. 349; *Shaw* v. *Thompson*, 1 Holt. 159; Ex p. *Hall*, 1 Atk. 201—or the trader was sick: Bull, N. P. 39—or that the Creditor calling at the private house, was there desired to go to the counting house, he never receiving persons on business at his private house: *Round* v. *Byde*, Cooke, 110, 111. All these, and the like, circumstances may be given in evidence to rebut the presumption of the trader's intention arising from circumstances accompanying the act, such as those above mentioned. And the act must be done with intent to defeat or delay *Creditors*, for if done to avoid performing a mere duty, as to avoid an arrest upon an *excommunicato capiendo*, or the service of process to enforce a decree in chancery, (unless a decree for payment of money)—Com. Dig. Bankrupt, C.; 1 Cooke, 9—or to avoid an attachment upon an award for not delivering goods pursuant thereto—*Per Willes*, C. J. in *Linwood* v. *Eade*, 1 Atk. 196—it will not of itself constitute an act of Bankruptcy, unless accompanied by circumstances from which also an intent to defeat or delay Creditors may fairly be presumed.

CLASS II.

ACTS WHICH SIMPLY RAISE A PRESUMPTION OF INSOLVENCY.

Blackstone, who speaks of Bankrupts in the improved tone adopted by writers about his time and ever since, yet defines a Bankrupt thus:—"A Bankrupt is a trader who secretes himself, or does certain other acts tending to defraud his Creditors;" 2 Com. 285; and by repeating his definition, ibid. 471, and again, ib. 477, affords evidence of having adopted it, not without due reflection. And it will strike the reader, upon consulting the early statutes, that such description perfectly accords with the spirit of their provisions. In the statutes of Henry and Eliz., and of James, they are "offenders;" and up to the commencement of the reign of James I., acts of Bankruptcy were all acts of fraud, and fraudulent intent should be proved. Towards the close of his reign, however, great innovations appear, as will be seen by reference to 21 Jas. I., c. 19, s. 2. By this section, acts of Insolvency evidenced by *not paying or compounding for a debt within six months after it became due*, &c., or, *lying two months in prison for debt*, were made acts of Bankruptcy; and since that period the law has gradually relaxed its rigour towards persons who fail in paying their debts, whilst it has extended its watchfulness over the conduct of traders, in order to secure the property for Creditors.

This altered spirit in dealing with Bankruptcy matters, will account for the increase in the number of involuntary acts of Bankruptcy which appear in the recent Act, the law being desirous to test a trader's solvency in as early a stage as possible.

ACTS OF BANKRUPTCY

Which simply raise a presumption of Insolvency.

These have been divided (p. 23) into 1st.—*Voluntary*. 2d.—*Involuntary*.

1st.—*Voluntary*, where the trader, of his own accord, *ex proprio motu*, commits an act declared by the statute to be an act of Bankruptcy.

These are seven in number, viz.:—

1st.—VOLUNTARY ACTS.

1.—*Escaping from prison or custody.*—6 W. IV., c. 14, s. 21.

2.—*Compounding with Petitioning Creditor.*—6 W. IV., c. 14, s. 24.

3.—*Executing conveyance or assignment by deed to trustees, for benefit of Creditors.*—6 W. IV., c. 14, s. 20.

4.—*Filing declaration of Insolvency*—6 W. IV., c. 14, s. 22—in Secretary of Bankrupt's office, to be inserted in *Gazette*, under this section.

5.—*Filing petition in Insolvent Debtors' Court.*—3 & 4 Vic., c. 107, s. 27.

6.—*Filing declaration in form in Schedule D to this Act*—12 & 13 Vic. c. 107, s. 22—in Secretary of Bankrupt's office.

7.—*Filing petition for arrangement with Creditors, under section* 90 *of same Act.*—12 & 13 Vic., c. 107, s. 23.

1. *Escaping from prison or custody.*]—This was very early made an act of Bankruptcy. Under 21 Jac. I., c. 19, s. 2, it was an act of Bankruptcy to escape from prison, but the arrest must have taken place for a sum of £100, or more, of just debts. Even if he put in bail in order to procure his enlargement when so arrested, he committed an act of Bankruptcy. The statutes 6 Geo. IV., c. 16, s. 5, Eng., and 6 Wm. IV., c. 14, s. 21, Ir., are silent as to the sum for which the person is arrested, therefore any escape from an arrest for debt is an act of Bankruptcy. The following are the words of the section here referred to :—"Or if any such trader having been arrested, committed, or detained for debt, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of Bankruptcy, from the time of such arrest, commitment, or detention;" these are also in 6 Geo. IV., above cited. The escape must be in fact, and not merely that which might be deemed an escape in contemplation of law. And, therefore, where a prisoner, arrested in Kent, and brought up by *habeas* was allowed to call at his attorney's in the City, by the officer who accompanied him, before he brought him to the judge's chambers, this, though an escape in law, was holden not to be such an escape as would constitute an act of Bankruptcy, the prisoner having been substantially in custody the whole of the time: *Rose* v. *Green*, 1 Burr. 437; the words "being so arrested, committed, or detained," have reference to those immediately preceding them in the section, and comprised under the involuntary acts of Bankruptcy, No. 1. *Lying in prison for debt twenty-one days*, which see at p. 48.

2. *Compounding with petitioning Creditor.*]—By 6 Wm. IV., c. 14, s. 24, Ir., and 6 Geo. IV., c. 16, s. 8, Eng., "If any trader, liable by virtue of this Act to become Bankrupt, shall, after a docket struck against him, pay to the person, or persons, who struck the same, or any of them, money, or give, or deliver to any such person, any such satisfaction or security for his debt, or any part thereof, whereby such person may receive more in the pound, in respect of his debts, than the other Creditors, such payment, gift, delivery, satisfaction, or security, shall be an act of bankruptcy," &c., see Ex p. *Brown*, 16 Ves. 472;

Ex p. *Mear*, 1 Mont. B. L. 20; Ex p. *Vernon*, 2 Cox, 61; *Vernon* v. *Hankey*, Cooke, 116. The word "Creditors in this section means the Creditors who are entitled to receive dividends under the Bankruptcy, in the ordinary way; and the "property," the payment, gift, or delivery of which this section was intended to guard against, is property which would form the subject of administration and distribution under and by virtue of the "fiat" (in Ireland the "commission"). So where a partnership which had subsisted between A, B, and C, was dissolved, and the business continued by A and B, and a separate fiat issued against A, on the petition of a joint creditor of A and B, another separate fiat issued against B, also a joint fiat against A and B, and ultimately a joint fiat against A, B, and C, when all the other fiats were annulled, and between the issuing the separate fiat against A and the adjudication under the joint fiat, against the three, payments were made out of the estate of A and B to the petitioning Creditor under A's separate fiat, it was held that this did not occasion a forfeiture of the debt, under the 8th section: Ex p. *Smith*, 3 M. D. & D. 144; 7 Jur. 183. Where the petitioning Creditor's debt consisted of the balance of an account settled, and also on an account current, and after commission issued, the Creditor took security for the balance of an account settled, leaving the other account, he was held to have forfeited both debts: Ex p. *Vernon*, 2 Cox, 61. And where the Bankrupt, after the commission issued, and before certified, gave to the petitioning Creditor, who was also assignee, a bill of exchange for part of his debt, the residue having been proved under the commission, the bill was held to be void, as contrary to the general policy of the Bankrupt law, and contrary to the spirit, although not strictly within the letter of this section: *Rose* v. *Main*, 1 Scott, 137; 1 Bing. N. C. 357. And if the agreement of the petitioning Creditor with the Bankrupt is wholly, or in part, the consideration for a bill of exchange, the bill is void, and no action can be maintained upon it—*Davis* v. *Holding*, 1 M. 2 W. 159; but the giving a bill of exchange to the petitioning creditor does not make his debt void, so as to preclude his suing on the original consideration where no fiat has been prosecuted, and it does not appear that the Creditor has in fact, or by the agreement could have, received more than his debt: *Davis* v. *Holding*, 3 Per. and D. 413. And this obtaining of payment or security seems to be an act of Bankruptcy, although it be uncertain at the time whether the person obtaining it will thereby receive more than the other Creditors: see Ex p. *Paxton*, 15 Ves. 463. But where a friend of the Debtor agreed to give a Creditor 5s. in the pound on the amount of his debt, on condition that the Creditor should sue out a commission against the Debtor, this was holden to be a legal contract, and a bill given for the amount of it a valid bill: *Fry* v. *Malcolm*, 5 Taunt. 117. A payment of part of the petitioning Creditor's debt to an agent of the petitioning Creditor after the fiat issued, but without notice thereof, and with no intention on the part of the petitioning Creditor, or agent, to gain an advantage over the other Creditors, does not bring the case within this section: Ex p. *Gardiner*, 2 Dea. 142; 3 Mon. & A. 46. So also a Creditor receiving the amount of his debt and costs for the purpose of supersedeas, with the consent of the only other Creditor who had proved, does not incur the penalty of this clause: Ex p. *Smyth*, 2 Glyn. & J. 221. And where Creditors sued out a commission, and then abandoned it to proceed against the bail to action, and took a joint note for the debt from one of the bail of the Bankrupt, and the bill was in fact paid by the bail, this was not a forfeiture of the debt under this section : Ex p. *Green*, 1 Dea. and C. 230. Some of the cases above cited have been decided on a similar clause in statute 5 Geo. II., c. 30, s. 24, Eng., the only material difference between which and the present clause is, that the former only contemplated private bargains, "whereby such person, suing out such commission, shall *privately* have, and receive more in the pound, in respect of his debt, than the other creditors;" and this clause was in 11 & 12 Geo. III., c. 8, s. 10, Ir.; as well as 5 Geo. II., c. 30, s. 24, Eng.; and see 15 Ves. 464; Ex p. *Kirk;* Ex p. *Brine*, Buck. 19, 108. Under this statute it is immaterial whether the money or security be given to the Petitioning Creditor privately or not.

3. *Executing conveyance or assignment by deed to trustees, for benefit of Creditors.*]—This act of Bankruptcy had been before 6 Wm. IV., c. 14, s. 20, as unlimited with regard to its relation back as any other act of Bankruptcy; but following 6 Geo. IV., c. 16, s. 4, Eng., the petitioning Creditor was limited to six months, from the execution thereof, for the issuing a commission. If after the expiration of that time, no commission issued, then, by the statute, such ceased to be an act of Bankruptcy. As to its Execution, Attestation by Attorney, Notice, Trader's residence, Advertisements, &c., see section of Act as above.

4. *Filing a Declaration of Insolvency.*]—By 6 Wm. IV., c. 14, s. 22, (same as 6 Geo. IV., c. 16, s. 6, Eng.) if any such trader "shall file in the office of the Lord Chancellor's secretary of Bankrupts, a declaration in writing signed by such trader, and attested by an attorney or solicitor, that he is insolvent, and unable to meet his engagements, the said secretary of Bankrupts, or his deputy, shall sign a memorandum that such declaration had been filed, which memorandum shall be authority for the printer of the *Dublin Gazette*, to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid, be an act of Bankruptcy, committed by such trader at the time when such declaration was filed; but no commission shall issue thereupon, unless it be sued out within two calendar months, next after the insertion of such advertisement; and unless such advertisement shall have been inserted in the *Dublin Gazette*, within eight days after such declaration was filed; and no docket shall be struck upon such act of Bankruptcy, before the expiration of four days, next after insertion of such advertisement, in case such commission is to be executed in London; or before the expiration of eight days, next after such insertion, in case such commission is to be executed in the country; and the *Gazette*, containing such advertisement, shall be evidence, to be received of such declaration having been filed. By 6 Wm. IV., c. 14, s. 23, (same as 6 Geo. IV., c. 16, s. 7,) no commission under which the adjudication shall be grounded on the act of Bankruptcy, being the filing of such declaration, shall be deemed invalid, by reason of such declaration having been concerted, or agreed upon

between the Bankrupt, and any Creditor or other person. This section is virtually repealed by 12 & 13 Vic., c. 107, s. 22, (same as 5 & 6 Vic., c. 122, s. 22, Eng.) whereby it is enacted, "that if any such trader shall file in the office of the Lord Chancellor's secretary of Bankrupts, a declaration in writing, in the form of schedule (D) hereunto annexed, signed by such trader, and attested by an attorney or solicitor, that he is unable to meet his engagements, every such trader shall be deemed thereby to have committed an act of Bankruptcy, at the time of filing such declaration, provided a fiat in Bankruptcy shall issue against such trader, within two months from the filing of such declaration;" and a copy of such declaration, certified by the secretary or his clerk, shall be received as evidence of its having been filed. This simplifies the same act of Bankruptcy, (No. 6, lower down—which see.)

5. *Filing Petition in Insolvent Debtors' Court.*]—By 3 & 4 Vic., c. 107, s. 27, Ir., (same as 1 & 2 Vic., c. 110, s. 39, Eng.) the filing of the petition of every person in actual custody, who shall be subject to the laws concerning Bankrupts, and who shall apply by petition, to the Insolvent Debtors' Court for his discharge from custody, according to this Act, shall be counted and adjudged an act of Bankruptcy from the time of filing such petition; and any Commission of Bankruptcy issuing against such person, and under which he shall be declared Bankrupt before the time appointed by the said court, and advertised in the *Dublin Gazette* for such person to be brought up and dealt with according to this Act, or at any time within two calendar months from the making of any such order as aforesaid, *(namely, the order for vesting the estate of the trader in the Provisional Assignee of the Insolvent Debtors' Court,)* whether upon the petition of such prisoner or the petition of any such Creditor, as aforesaid, shall have the effect of divesting the said real and personal estate and effects of such person out of the Provisional Assignee. Provided always that the filing of such petition shall not be deemed an act of Bankruptcy, unless such person be so declared Bankrupt before the time so advertised as aforesaid, or within two such calendar months as aforesaid; but that every such order as aforesaid shall be good and valid, notwithstanding any fiat in Bankruptcy under which such person shall be declared Bankrupt after the time so advertised, as aforesaid, and after the expiration of such two calendar months, as aforesaid. The petition is considered as filed when it reaches its place of final custody, and not when it is delivered to an officer of the court, part of whose duty it is to hand it over to an another officer for final deposit: *Garlick* v. *Sangster*, 9 Bing. 46; 2 M. & Scott, 68.

6. *Filing Declaration in form Schedule D. of* 12 *&* 13 *Vic., c.* 107.]—This act is a re-enactment of No. 4 above, with modifications, especially as to publicity, the advertisement in the *Gazette* being unnecessary; and it is contingent upon the issuing the commission within two months from the filing. A copy of the declaration becomes evidence of such having been filed, provided it purports to be certified by the secretary or his clerk. In England the date of the fiat is *primâ facie* evidence of the time of its being issued: Ex p. *Rowe*, 4 Dea. 16, Mon. & C. 334. This is a new creation under 12 & 13 Vic., c. 107, s. 22, Ir.; and 5 & 6 Vic., c. 122, s. 22, Eng.

7. *Filing Petition for Arrangement with Creditors, under section* 90 *of same Act.*]—By 12 & 13 Vic., c. 107, s. 23, it is enacted "that the filing of a petition by any trrader for an arrangement between such trader and his Creditors, with the concurrence of a certain number therof, under the provisions of this Act, shall be accounted and adjudged conclusive evidence of an act of Bankruptcy," &c. And then follows a proviso rendering it contingent upon the issuing of a commission within two months after notice appearing in the *Gazette.* Another contingency is super-added, namely, that no commission shall issue unless and until after the petition be dismissed. So that this act of Bankruptcy, although a voluntary one on behalf of the trader, becomes imperfect without the concurrence of other parties. The petition alluded to in this section, is the petition contained under section 90 of same Act.

2ND.—INVOLUNTARY ACTS.

Where the Act raising the presumption of Insolvency is committed by the trader, not by his own will, but by the will of some other person, through process of law.

These are ten in number:—

1.—*Lying in prison for debt twenty-one days.*—6 Wm. IV., c. 14, s. 21.

2.—*Privileged trader not paying, securing, or compounding to satisfaction, &c., upon Creditor's affidavit filed in any Court of Record in Dublin.*—6 Wm. IV., c. 14, s. 26.

3.—*Privileged trader not paying money under decree or order of any Court of Equity.*—6 Wm. IV., c. 14, s. 27.

4.—*Not appearing to Creditor's summons, under ss.* 11 *&* 12 *of same Act.*—12 & 13 Vic., c. 107, s. 13.

5.—*Appearing upon summons, but refusing to admit the demand.*—12 & 13 Vic., c. 107, s. 13.

6.—*Appearing upon summons and signing admission of demand, yet not paying or securing to satisfaction of Creditor.*—12 & 13 Vic., c. 107, s. 14.

7.—*Appearing upon summons and signing an admission of part of demand, yet not making deposition of good defence as to residue, and then not paying or securing to satisfaction, &c. the sum so admitted.*—12 & 13 Vic., c. 107, s. 15.

8.—*Not paying or securing to satisfaction judgment debt upon execution, where no set off.*—12 & 13 Vic., c. 107, s. 20.

9.—*Not paying or securing to satisfaction, &c. decree or order of Court of Law or Equity, Bankruptcy or Lunacy.*—12 & 13 Vic., c. 107, s. 12.

10.—*Not paying or securing to satisfaction, &c. of creditors for* £100, £150 *or* £200 *respectively, as therein set forth after affidavit of debt and notice to pay.*—12 & 13 Vic., c. 107, s. 24.

1. *Lying in Prison for debt twenty-one days.*]—By 6 Wm. IV., c. 14, s. 21, which is a copy of 6 Geo. IV., c. 16, s. 5, Eng. it is enacted "that if any such trader having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall, upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days; or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him and not discharged, every such trader shall be thereby deemed to have committed an act of Bankruptcy." A similar clause was in 1 Jac. I., c. 15, s. 2, and in 21 Jac. I., c. 19, s. 2, varying principally in the period of the imprisonment required to constitute an act of Bankruptcy; and, also in the clause of relation back to the time of the arrest, which is altogether omitted in 6 Geo. IV. and 6 Wm. IV. The period of imprisonment in statute, 1 Jac. I., was *six months;* in statute 21 Jac. I., *two months,* and in 6 Wm. IV., but *twenty-one days.* But by this section of 6 Wm. IV. it is provided, "that if any such trader be in prison at the time of the commencement of this Act, such trader shall not be deemed to have commited an act of Bankruptcy by being in prison, until he shall have lain in prison for the period of two months." The day of arrest or commitment is reckoned inclusive—*Glassington* v. *Rawlins,* 3 East 407—and the docket may be struck and the fiat issued on the last of the twenty-one days, if the act of Bankruptcy is actually completed before the date of the fiat: Ex p. *Dufrene* 1 V. & B. 51. In this case "fiat" in England will be found equivelent to "commission" in Ireland. This act not being completed until the twenty-one days are expired, does not relate back to the first day of the arrest or imprisonment, as under the former statutes—*Higgins* v. *M'Adam,* 3 Y. & J. 1: *Moser* v. *Newman,* 6 Bing. 556—and to make it an act of Bankuptcy, the trading must be *before* the imprisonment: Ex p. *Lynch,* Mont. 453. But there must be an uninterrupted imprisonment of twenty-one days under the arrest or commitment. If a man arrested, be bailed out before the expiration of twenty-one days, and afterwards render in discharge of his bail and remain in custody twenty-one days or upwards, this act of Bankruptcy will commence on the day of render, and not on that of the original arrest: Ex p. *Dufrene,* 1 Ves. & B., 51; *Tribe* v. *Webster,* Willes, 464. If a trader arrested by a sheriff's officer be allowed to go at large for a few days, and then return into custody, and he be removed by *hebeas* into the custody of the marshal, and remain there the requisite time, the uninterrupted imprisonment commences upon his return into custody, *Barnard* v. *Palmer,* 1 Camp. 509. Where a trader was arrested, but being too ill to be removed, was allowed to remain in custody of the bailiff's follower, and was afterwards removed to a lock-up house, as soon as it could be accomplished with safety; it was holden that the imprisonment commenced at the time of the arrest; because there had been, in fact, a continued imprisonment from that time: *Stevens* v. *Jackson,* 4 Camp. 194: Marsh, 459, 6 Taunt, 106. So where a man was arrested and sham bail put in for him, merely for the purpose of having him removed to the prison of the court, and he was removed accordingly, the lying in prison was holden to

commence on the day of the arrest, and not on the day of the render; for there was, in fact, no interruption of the imprisonment, but a mere transfer of the prisoner from one custody to another: *Rose* v. *Green*, 1 Burr. 437. So, also, having the benefit of the day rules is not an interruption of the imprisonment, for if the party is not actually within the walls, he is attended by an officer, or on security for the day, and bound to return in the evening: *Soame* v. *Watts*, 1 Car. & P. 401. Where the arrest or commitment is for a debt, it must be a legal debt; and, therefore, lying in prison upon an arrest, at the suit of an executor before probate, is not an act of Bankruptcy: 3 Lev. 439; Cooke, 113. Formerly a person in custody for a crime (unless in custody under the commissioner's warrant for not answering—*R.* v. *Page*, 7 Price, 616, or the like)—could not commit an act of Bankruptcy by lying in prison, even although he, at the same time, were detained for debt, and remained in prison twenty-one days after such detainer—Ex p. *Bowes*, 4 Ves. 168; and see Ex p. *Hylliard*, 1 Atk. 147—but this is now altered by the above section of the present statute, which, after mentioning an arrest and commitment for debt, says "or having been arrested and committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him," &c. And it has been recently holden that lying in prison, detained for the non-payment of exchequer penalties for smuggling, was an act of Bankruptcy: *Cobb* v. *Symonds*, 1 D. & R. 111; 5 B. & A. 516.

2. *Privileged Trader not paying, or securing, or compounding to satisfaction, &c., upon Creditor's affidavit, filed in any Court of Record in Dublin.*]—This Act is so little applicable to Ireland that it is deemed unnecessary to occupy either time or place with the subject. The 6 Wm. IV., c. 14, s. 26, Ir., which creates this Act of Bankruptcy, is merely a copy of 6 Geo. IV., c. 16, s. 10; see Arch. B. L. 524; De Gex. B. L. 87, &c.

3. *Privileged trader not paying money under decree or order of any Court of Equity.*]—The same observations may be applied to this as to the last Act of Bankruptcy, and the like authorities referred to.

4. *Not appearing to Creditor's summons, under sections* 11 *&* 12 *of same Act.*]—By 12 & 13 Vic., c. 107, s. 13, Ir., a new Act of Bankruptcy is created, copied directly from 5 & 6 Vic., c. 122, s. 13, Eng. It enacts that if any such trader so summoned, as aforesaid, shall not come before such court at the time appointed, (having no lawful impediment made known to, and proved to the satisfaction of, the court at the said time, and allowed,) or if any such trader, upon his appearance to such summons as aforesaid, or at any enlargement or adjournment thereof, (as the case may be,) shall refuse to admit such demand, and shall not make a deposition in the form hereinbefore mentioned, that he believes he has a good defence to such demand; then, and in either of the said cases, if such trader shall not within fourteen days after personal service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure, or compound for such demand to the satisfaction of such Creditor, or enter into a bond in such sum, and with two sufficient securities, as such court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought, or shall thereafter be brought, for the recovering

of the same, together with such costs as shall be given in such action, every such trader shall be deemed to have committed an act of Bankruptcy, on the fifteenth day after service of such summons, provided a commission of Bankrupt shall issue against such trader within two months from the filing of such affidavit.

5. *Appearing upon summons, but refusing to admit the demand.*]—12 & 13 Vic., c. 107, s. 13. The object of the statute is manifestly to force a defaulting trader into the adoption of the alternative, either to pay his debts, or to become a Bankrupt. The preceding act of Bankruptcy, (No. 4,) arose out of the trader's *non-appearance* upon summons, and this Act (No. 5,) arises when *upon his appearance* he refuses to comply with the plain and obvious dictates of fair dealing, namely, admitting the debt, if it be due, or, swearing he believes what he says, if he denies it to be due; for that is the plain meaning to be drawn from the deposition, schedule B. No. 2, annexed to the recent act. The same provision existed verbatim in 5 & 6 Vic., c. 122, s. 13., Eng.

6. *Appearing to summons and signing admission of demand, yet not paying or securing to satisfaction of Creditor.*]—By 12 & 13 Vic., c. 107, s. 14, Ir., copied from 5 & 6 Vic., c. 122, s. 14, Eng., another new Act of Bankruptcy is created. By this section it is enacted "that if any such trader so summoned, as aforesaid, upon his said appearance shall sign an admission of such demand in the form aforesaid, and shall not, within fourteen days next after the filing of such admission, pay or tender, and offer to pay to such Creditor the amount of such demand, or secure or compound for the same to the satisfaction of the Creditor, every such trader shall be deemed to have committed an act of Bankruptcy, on the fifteenth day after the filing of such admission, provided a fiat in Bankruptcy shall issue against such trader within two months from the filing of such affidavit.

7. *Appearing to summons and signing an admission of part of demand, yet not making deposition of good defence as to residue, and then not paying or securing to satisfaction, &c., the sum so admitted.*]—By 12 & 13 Vic., c. 107, s. 15, Ir., (same as 5 & 6 Vic., c. 122, s. 15, Eng.) this new Act of Bankruptcy was created, by enacting that, "if any such trader so summoned, as aforesaid, shall, upon his said appearance, sign an admission for part only of such demand, in the form aforesaid, and shall not make a deposition in the form hereinbefore required, that he believes he has a good defence to the residue of such demand, then, and in such case, if such trader, as to the sum so admitted, shall not within fourteen days next after the filing of such admission pay, or tender and offer to pay, to such Creditor the sum so admitted, or secure or compound for the same to the satisfaction of the Creditor, and as to the residue of such demand shall not, within fourteen days after personal service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure, or compound for the same to the satisfaction of such Creditor, or enter into a bond for such sum, and with two sufficient sureties as such court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought, or shall thereafter be brought, for the recovery of the same, together with such costs as shall be given in such action, every such

trader shall be deemed to have committed an act of Bankruptcy on the fifteenth day after service of such summons, provided a commission of Bankrupt shall issue against such trader within two months from the filing of such affidavit. These acts of Bankruptcy are manifestly framed upon the 3 & 4 Vic., c. 105, s. 8, Ir. (same as 1 & 2 Vic., c. 110, s. 8, Eng.); but the present statute is much more extensive in its provisions, as the application to the Court was limited to a Creditor, or Creditors, whose debt was sufficient to constitute a petitioning Creditor's debt, but this extends to any Creditor, and the period for paying, &c., the debt is fourteen days only, instead of forty-one days. The delivery to the trader of the account of the particulars of his demand, and notice, must be personal, and the affidavit must be filed within one month next after such service, and the commission must issue within two months after filing. The decisions upon the 1 & 2 Vic., c. 110, s. 8, Eng., will be applicable to these Acts of Bankruptcy.

8. *Not paying or securing to satisfaction judgment debt upon execution, where no set off.*]—By 12 & 13 Vic., c. 107, s. 20, Ir., (same as 5 & 6 Vic., c. 122, s. 20, Eng.) it is enacted, that if any plaintiff shall recover judgment in any action personal, for the recovery of any debt or money demand, in any of her Majesty's Courts of Record, against any such trader, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set off against such judgment; and such trader shall not within fourteen days after notice in writing, personally served upon him, requiring immediate payment of such judgment debt, pay, secure, or compound for the same, to the satisfaction of such plaintiff, he shall be deemed to have committed an act of Bankruptcy, on the fifteenth day after service of such notice. Provided always, that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any court of justice, having jurisdiction in that behalf, no further proceeding shall be had on such notice; but that it shall be lawful, nevertheless, for such plaintiff, when he shall be again in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

9. *Not paying or securing to satisfaction, &c., a decree or order of Court of Law or Equity, Bankruptcy or Lunacy.*]—By 12 & 13 Vic., c. 107, s. 21, Ir., (same as 5 & 6 Vic., c. 122, s. 21, Eng.) it is enacted, that if any Decree or Order shall be pronounced in any cause, depending in any Court of Equity, or any order which shall be made in any matter of Bankruptcy or Lunacy against any such trader, ordering such trader to pay any sum of money, and such trader shall disobey such decree or order, the same having been duly served upon him, the person entitled to receive such sum, under such decree or order, or interested in enforcing the payment thereof, pursuant thereto, may apply to the court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order, fourteen days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to

have committed an act of Bankruptcy on the fifteenth day after the service of such order.

10. *Not paying or securing to satisfaction, &c., creditors for* £100, £150, £200, *respectively, after affidavit filed and notice to pay.*]—By 12 & 13 Vic., c. 107, s. 24, Ir., as well as 1 & 2 Vic. c. 110, s. 8, Eng., both provisions being alike, "if any single Creditor, or any two or more Creditors, being partners, whose debt shall amount to £100 or upwards; or any two Creditors whose debt shall amount to £150 or upwards; or any three or more Creditors whose debts shall amount to £200 or upwards, of any trader, within the meaning of the laws now in force, respecting Bankrupts, shall file with the proper officer, in the office of the Lord Chancellor's secretary of Bankrupts in Ireland, an affidavit," &c., "that such debt or debts is, or are, justly due to him or them respectively, and that such debtor as he or they verily believe is such trader as aforesaid, and shall cause him to be served personally with a copy of such affidavit or affidavits, and with a notice in writing, requiring immediate payment of such debt or debts; and if such trader shall not, within *twenty-one* days after personal service," &c., "pay such debt or debts, or secure or compound for the same, to the satisfaction of such Creditor or Creditors," &c., (and then it proceeds exactly as the forty-one day clause of 3 & 4 Vic., c. 107, s. 8, Ir., except that it substitutes twenty-one for forty-one days all through. By this it becomes identical with 1 & 2 Vic., c. 110, s. 8, Eng.) every such trader shall have been deemed to have committed an act of Bankruptcy, on the twenty-second day after service of such affidavit or affidavits and notice—provided a commission of Bankruptcy shall issue against such trader within two calendar months from the filing of such affidavit or affidavits, but not otherwise. This act of Bankruptcy may be said to have been superseded by the several acts created under the recent statute, and the following decisions will be found to apply thereto. The day of filing the affidavit is to be reckoned the first day of the two months within which a fiat must issue—Ex p. *Budd*, 5 Jur. 272; 1 M. D. & D. 436—and where the bond had been duly executed before, but the aproval of the Commissioner was not obtained until after the expiration of the twenty-first day, it was held to be a good act of Bankruptcy: Ex p. *Rhodes*, 4 Dea. 125; Mon. & C. 319. And if the creditor, after the affidavit is filed, is privy and consenting to the suspension of the payment, or the giving security beyond the twenty-one days—Ex p. *Goodday*, 1 M. D. & D. 677—or if the Creditor absents himself for a fortnight out of the twenty-one days, to evade payment, and in the meantime tender of the debt is made to the Creditor's clerk—Ex p. *Gratton*, 2 M. D. & D. 401—in these cases the Creditor cannot set up the non-payment, or not giving security within that time, as an act of Bankruptcy to support a fiat. The affidavit may be made by one of several partners of a firm—Ex p. *Whitby*, 4 Dea. 139; Mon. & C. 671—(and now as to before whom affidavits in Bankruptcy shall be sworn, see 12 & 13 Vic. c. 107, s. 69, Ir.) The affidavit must be filed before the notice is given to the Creditor, and cannot be taken off the file, unless for a very strong reason. The court has refused to order the affidavit to be taken off

the file, where the notice was given to the Creditor before the affidavit was actually filed—Ex p. *Gibson*, 3 Dea. 531; Mon. & C. 255—or where the debt sworn to had been satisfied, and the Creditor consented to the application: Ex p. *Ferreday*, 1 M. D. & D. 172. Also where the affidavit stated the debt to be £100 and upwards; and after a bond had been given and accepted, the Creditor filed another affidavit, stating the real amount of his debt to be £3,612, the court refused to order the second affidavit to be taken off the file—Ex p. *Rose*, 4 Dea. 66; Mon. & C. 149—though it is doubtful whether a fiat could be supported for neglect of payment, or giving security for the latter sum on the second affidavit and notice, as an act of Bankruptcy: Ex p. *Rhodes*, supra; see Ex p. *Cheese*, 3 M. D. & D. 79. When the Commissioner has approved the security, he is *functus officio*, and cannot revoke his approval: Ex p. *Neale*, 2 M. D. & D. 620. The court in which an action is brought upon the bond, has power to direct it to be delivered up to be cancelled, upon its being satisfied by payment of the money; and notwithstanding the plaintiff's attorney may have a lien on it for costs: *Wilson* v. *Firth*, 9 Dow. 573; but the court will not interfere, to order the bond to be delivered up, when it is satisfied by the render of the debtor to the gaol: *Ridler* v. *Chappelow*, 1 Dow. N. S. 637.

This concludes the series of acts of Bankruptcy which are committed by the Bankrupt, without any desire upon his part. For although he may be a consenting, and perhaps a willing party, yet the first inception of the act, resting with others beside the Bankrupt, it has been deemed proper, for sake of classification, to denominate them *Involuntary*, in contradistinction with those which are traceable entirely from their inception to the Bankrupt himself.

CHAPTER III.

PETITIONING CREDITORS.

Who may be.]—Any single Creditor to whom, or one of a partnership to which, £50 or upwards is due by a trader, who has committed an act of Bankruptcy, may be a Petitioning Creditor. Or two Creditors to whom are severally due debts amounting to £70. Or Three or more, to £100: 12 & 13 Vic., c. 107, s. 9. He may be an *uncertificated Bankrupt*, provided his assignees make no claim on the debt: Ex p. *Cartwright*, 2 Rose, 230. But not if, under a second commission, he has not paid fifteen shillings in the pound, his estate then vesting in the assignees: 6 Wm. IV., c. 14, s. 145, Ir.; and see Ex p. *Robinson*, 1 Mont. & M. 44, decided on a similar clause in England. Nor if discharged twice as an insolvent, and being afterwards a Bankrupt, and not paying fifteen shillings in the pound: Ex p. *Massarenas*, 1 Dea. & C. 507. An executor of a Bankrupt cannot be, if the debt be due before the Bankruptcy: Ex p. *Goodwin*, 1 Atk. 100. Nor a trustee alone without the *Cestui que trust:* Ex p. *Gray*, 4 D. & C.

778. Nor a married woman, although a separate trader, (her husband being abroad,) and so treated by the Bankrupt: in Re *Atkinson*, 2 Molloy, 451. Nor a husband for a debt due to his wife, *dum sola*, *Ramsay* v. *George*, 1 M. & S. 176. Nor an executrix, unless with husband: Ex p. *Mogg*, 2 G. & J. 397; *Martin* v. *Winter*, cit. ibid. 398. Nor a landlord against tenant for rent pending replevin: *Emery* v. *Mucklow*, 10 Bing. 401. Nor a secretary, although by private act he could commence "all actions and suits," on behalf of a public company: *Guthrie* v. *Fiske*, 3 B. & C. 178; 3 Star. 151. But see in Re *Beale*, 2 Drur. & W. 275. Where one Creditor only petitions, debt must be such as would maintain an action at law in his *own right*. So *joint-obligees* and partners must join: *Brickland* v. *Newsame*, 1 Taunt. 479; 1 Camp. 474. But one assignee may be: Ex p. *Blakey*, 1 G. & J. 197. One partner cannot sue out against another on partnership debt, but he may afterwards: Ex p. *Nokes*, 2 Mont. 144; and see Ex p. *Gray*, *supra*; and he may, but not on partnership debts: *Windham* v. *Patterson*, 1 Star. 144. What kind of partnership disqualifies: *Marston* v. *Barber*, 1 Gow. 17; and also, Ex p. *Briggs*, 3 D. & C. 367. And how far acceptance between partners: Ex p. *Austen*, 1 M. D. & D. 247.

An infant could not be—Ex p. *Barrow*, 3 Ves. 554—as he could not enter into the bond: Ex p. *Morton*, Buck. 42; and see Ex p. *Potts*, 1 M. D. & D. 331. But now the bond is abolished by 12 & 13 Vict., c. 107, s. 3, Ir. One that proved under a fiat since annulled, may sue out: *Beardman* v. *Shaw*, 1 N. Rep. 263.

CHAPTER IV.

THE PETITIONING CREDITOR'S DEBT.

What it must be.]—It must be *legal*, not *equitable*—Ex p. *Hawthorne*, Mont. 132—and lawfully contracted—Ex p. *Hall*, 1 Dea. 171—and not for an illegal consideration: *Wells* v. *Girling*, 1 Brod. & B. 447. If the debt be reduced below the necessary amount by payments, proved to have been invalid in point of law, the original debt will stand and support a commission—*Mann* v. *Shepperd*, 6 T. R. 79; Ex p. *Miller*, Buck. 283; *Doe* v. *Anderson*, 5 M. & S. 161—see also, as to giving in place of a contract debt, a bond afterwards held void—*Ambrose* v. *Clendon*, 2 Stra. 1042. cas. temp. Hard. 267; in Re *Bryant*, 1 Rose, 283—or paying by a bill finally dishonored—*Bickerdike* v. *Bollman*, 1 T. R. 405; and see Ex p. *Magnus*, 2 M. D. & D. 604—or a promissory note on a *wrong stamp*—*Geddes* v. *Mowatt*, 1 G. & J. 414; and see *Brown* v. *Watts*, 1 Taunt, 353—or where bills of lading were transferred, but were stopped *in transitu* by a higher claim, the original debt held good: Ex p. *Ashton*, 2 D. & C. 5. Notes bought in at ten shillings in the pound, a good Petitioning Creditor's debt for full sum: Ex p. *Lee*, 1 P. Wms. 782. A bill of exchange under the required amount, must have the interest expressed in the body, if intended so to make up the difference, otherwise interest not considered: In re *Burgess*, 8 Taunt. 660; 2 Moore, 745; Ex p. *Greenway*, Buck. 412; *Cameron* v. *Smith*, 2 B. & A. 305; Ex p. *Marlow*, 1 Atk. 150. And if Petitioning Creditor be indorsee of a bill, it must have been outstanding before the act of Bankruptcy—*Key* v. *Cook*, 2 M. & P. 30—and in his hands when suing out—Ex p. *Cattley*, 4 Dea. 138; and see Ex p. *Magnus*, 2 M. D. & D. 604. It must be a *present pre-existing*, not *contingent* debt: Ex p. *Page*, 1 G. & J. 100. Yet a warrant of attorney may under circumstances: *Miles* v. *Rawlins*, 4 Esp. 194. Debt on an account not liquidated: *pro Flower* v. *Herbert*, 2 Ves. 326; *contra*, Ex p. *Bowes*, 4 Ves. 168. An attorney's bill, though not taxed or signed, or delivered pursuant to the statute, will support a commission, though not an action: Ex p. *Steele*, 16 Ves. 166; Ex p. *Howell*, 1 Rose, 312. It may be so reduced afterwards as to annul—Ex. p. *Ford*, 3 Dea. 494—and may be taxed by either Bankrupt or Creditors: Ex p. *Prideaux*, 1 G. & J. 28. Pending an order for taxation it was no contempt to sue out: Moseley's Rep. 27; 1 C. B. L. 17. Surety for payment absolute, a sufficient debt —*Haylor* v. *Hall*, Palm. 325; *Dexham's* case, Stone, 183—and an award under arbitration—Ex p. *Lingood*, 1 Atk. 241; where some only of a firm voluntarily resided in an *enemy's country*, the partnership debt incapable of supporting a commission: *M'Connell* v. *Hector*, 2 Bos. & P. 113. But otherwise, where licensed by an order in council—Ex p. *Baglehole*, 1 Rose, 271—or where residence *involuntary*, and not adhering: *Roberts* v. *Hardy*, 3 M. & S. 533. A debt not inserted in a discharged Insolvent's schedule will sustain a commission—Ex p. *Shuttleworth*. 2 G. & J. 68—and a penalty to the crown: *Cobb* v. *Symmonds*, 5 B. & A. 516, Three or more claiming debts under the specified sum, but the debt of one sufficient for one; it was doubted how far such could be admitted—*Smith* v. *Milles*, 1 T. R. 481—but there seems no reason for the doubt, as there is no ambiguity in the requirements of the statute. Three or more petitioning must claim debts to a specified amount; and see Mr. Deacon's opinion, 1 De Gex. B. L. 97.

When it may have accrued.]—The recent statute removes much litigation upon this subject, and renders unnecessary for citation any longer a very numerous list of cases. By 12 & 13 Vic., c. 107, s. 8, Ir., it is enacted that "An act of Bankruptcy committed by a trader at any time within one year of the issuing of a commission, whether prior or subsequent to the debt of the petitioning Creditor," shall be "sufficient to support the adjudication"—and the section is so far retrospective as to conclude thus—"whether issued before or after the *passing* of this Act." The royal assent was given on the 1st day of August, 1849, and see 35 Geo. III., c. 12, Ir., as to operation of date in title, and *Latless* v. *Holmes*, 4 T. R. 660, as to "passing of this Act." But the Petitioning Creditor's debt must have accrued before the Debtor ceased to be a trader—*Dawe* v. *Holdsworth*, Peake, 64; *Doe* v. *Lawrence*, 2 Car. & P. 134—that is, whilst he was in trade, or before he entered into it—Cooke, 28; *Baillie* v. *Grant*, 9 Bing. 121; 2 M. & Scott, 193—and if a part, insufficient to support the fiat, was contracted during the trading, it cannot be made up by a debt contracted after the trading: In re *Dolby*, Mon. & C. 636; 4 Dea. 261. Trader contracting a further debt after he left off trade, and paying money without any direction as to its application—held, that the payment should be applied to the old debt; and the new debt being contracted after trade was left off, was not sufficient to support the commission: *Meggot* v. *Mills*, 1 Ld. Raym. 289; Coombe, 463. What is a retirement sometimes questionable: see Ex p. *Cundy*, 2 Rose, 357; Ex p. *Paterson*, 1 Rose, 403; *Wharum* v. *Routledge*, 5 Esp. 235. But it shall be presumed to continue until contrary shown: *Henny* v. *Birch*, 3 Camp. 233.

The following will be found applicable to Ireland, as the sections of the statutes 7 Geo. I., and 5 Geo. II., therein referred to, were consolidated in 11 & 12 Geo. III., c. 8, s. 13, Ir., and afterwards in 6 Wm. IV., c. 14, s. 62, Ir. By statute 7 Geo. I., c. 31, s. 1, Eng., persons who should give credit on such securities as aforesaid, namely, bills, bonds, promissory notes, or other securities, to any person who should afterwards become bankrupt, upon a good and valuable consideration, *bonâ fide*, might prove for them under the commission, although the same were not payable at the time of the act of Bankruptcy; and by statute 5 Geo. II., c. 30, s. 22, Eng., reciting this clause, it was enacted, that it should be lawful for such person to petition, or join in petitioning for the commission. Now, under this statute, 5 Geo. II., c. 30, s. 22, Eng., not only the person to whom the Bankrupt gave negotiable securities, but also any person to whom they were afterwards indorsed, might petition for the commission—Cullen, 74; *Anon.* 2 Wils. 135—and this whether the Bankrupt were drawer or acceptor—see Ex p. *Douthat*, 4 B. & A. 67—or whether the bills or notes, &c., were payable at the time of suing out the commission or not: see Ex p. *Douthat*, 4 B. & A. 67. It should seem, therefore, that the same construction should be given to this clause of statute 5 & 6 Vic., c. 122, s. 9, Eng.; or 12 & 13 Vic., c. 107, s. 9, Ir., (see p. 53, *supra.*) But a debt to be within the statute, must be payable at a time certain, either by express stipulation, or by the custom of the trade, and although it must have existence at the issuing of the commission, it is not necessary that it should be then payable, the words of the statute 12 & 13 Vic., c. 107, s. 9, Ir., being "Every person who has given credit to any trader, upon valuable consideration, for any sum payable at a certain time,"—see Ex p. *Page*, 1 Glyn. & J. 100—"which time shall not have arrived when such trader committed an act of Bankruptcy, may so petition, or join in petitioning, as aforesaid, whether he shall have any security, in writing or otherwise, for such sum or not;" and so with 5 & 6 Vic., c. 122, s. 9, Eng. Before 6 Geo. IV., c. 16, Eng., which contained a similar clause, such persons only as had bills, bonds, promissory notes, or other written securities for their debts, could petition, in England, in cases where the debt was not actually payable at the time of the act of Bankruptcy: 5 Geo. IV., c. 30, s. 22; *Hoskins* v. *Duperoy*, 9 East. 498; *Price* v. *Nixon*, 5 Taunt. 338; *Cothey* v. *Murray*, 1 Camp. 335; Ex p. *Roberts*, 1 Mad. 72; *Nickson* v. *Jepson*, 2 Stark. 227; and see Ex p. *Douthat*, 4 B. & A. 67. All the above defects in the Bankrupt laws now seem to be remedied by 5 & 6 Vic., c. 122, s. 9, in England, and 12 & 13 Vic., c. 107, ss. 8 & 9, in Ireland.

How proved.]—The Petitioning Creditor must make an affidavit of his debt before he sues out the commission, and he must afterwards make depositions as to his debt before the Commissioners.

In actions at law the Petitioning Creditor's debt is proved thus:—In actions by or against the assignees, if within the 6 Geo. IV., c. 16, ss. 90. 92, Eng., (6 Wm. IV., c. 14, s. 104, 106, Ir. being the same,) and no notice of disputing it have been served in the manner directed by the statute, the deposition of the Petitioning Creditor as to his debt, filed among the proceedings, is to be deemed sufficient evidence of the debt therein stated, 6 Geo. IV., c. 16, s. 90; but it is still open to the court to consider whether the debt there stated be, in law, a good Petitioning Creditor's debt or not, and where the debt appeared due to the Petitioning Creditor as indorsee of bills of exchange; but without shewing whether indorsements were before or after Acts of Bankruptcy, held insufficient: *Key* v. *Cooke*, 2 M. & P. 720. But in all other actions, and even in actions by or against assignees, where such notice has been duly served, the Petitioning Creditor's debt must be proved in the same manner as in an action by him against the Bankrupt: Bul. N. P. 37; see. *Abbot* v. *Plumbe*, 1 Doug. 216. All admissions by the Bankrupt previous to the issuing of the fiat—*Dowton* v. *Cross*, 1 Esp. 168; and see *Hoare* v. *Coryton*, 4 Taunt. 560—entries in his books, posted by himself before the Bankruptcy—*Watts* v. *Thorpe*, 1 Camp. 376; and see *Ewer* v. *Preston*, Hard. 378—and the like, are evidence of the Petitioning Creditor's debts. So his promissory notes, bearing date before the Bankruptcy, are *primâ facie* evidence of it: *Taylor* v. *Kinlock*, 1 Stark 177. An account down to a time before the Bankruptcy, signed by the Bankrupt, will not be received as evidence of the debt, unless proved to have been signed by the Bankrupt before the Bankruptcy—*Hoare* v. *Coryton*, 4 Taunt. 560—except in actions by the Bankrupt himself, where his admissions at any time will be received in evidence against him: see *Jarratt* v. *Leonard*, 2 M. & S. 265. The Bankrupt himself, of course, cannot be a witness for this purpose—*Saunderson* v. *Laforest*, 1 Car. & P. 46—but a Creditor may, if he release the assignees—Arch. Pl. & Ev. 391—or even an assignee may prove the Petitioning Creditor's debt if he release his claim as a Creditor; for, as assignee, he merely stands in the situation of a trustee to the estate: *Tomlinson* v. *Wilks*, 5 Moore, 173. If the debt be proved to have once existed, its continuance will be presumed until the contrary be proved: *Jackson* v. *Irvine*, 2 Camp. 48; *Ewer* v. *Preston*, Hardw. 378. But proof of Bankrupt having drawn or indorsed a bill of exchange for £100, and of that bill being over-due in the hands of a holder, is not sufficient proof of a Petitioning Creditor's debt, without proof of a default of payment by the acceptor—*Giles* v. *Powell*, 2 Car. & P. 259—and a cheque of £100 given to the Bankrupt, as a loan, is not evidence of the debt without proof of its being paid: *Bleasby* v. *Crossley*, 2 Car. & P. 213; 11 Moore, 327.

CHAPTER V.

SUING OUT THE COMMISSION.

When £100 is due by a Trader.]—When a person owes £100 or more, and that the Creditor has ascertained that he comes under the class of traders liable to the laws of Bankruptcy (for which see *Traders*, Chap. I., page 17), then the course to be pursued is to discover if he has, as yet, committed an act of Bankruptcy (see acts of Bankruptcy, Chap. II., page 29, *supra*). If he has not, or if there be not sufficient proof of his having done so, or if it be more than twelve months since, or even twelve months (see s. 7 of 12 & 13 Vic., c. 107), then if it be advisable to issue a commission, let the Creditor make affidavit thereof, (and before whom affidavits sworn see s. 69 of same). File this affidavit in the office of the Secretary of Bankrupts, at the Four Courts, Dublin; serve the trader with a true copy thereof, and also with a notice in writing, stating that the affidavit was filed in the office, pursuant to 12 & 13 Vic., c. 107. If, after this, twenty-one days elapse without paying the debt or securing it to the satisfaction of the Creditor, an act of Bankruptcy is committed on the twenty-second day *after service*, as above. But a commission must issue within two months from the filing of this affidavit, according to the 24th section of the same act.

Where £50 is due to a Creditor.]—If this sum be due, see as to the Debtor being a trader, or having committed an act of Bankruptcy, as just stated.

If he has committed an act of Bankruptcy, and that evidence thereof can be readily obtained, then let the Creditor adopt the course pointed out in page 60, *infra*.

If he has not committed an act of Bankruptcy, or that evidence thereof be doubtful, or there be difficulty in arriving at it, then let the Creditor have recourse to the following process which will compel the Debtor to adopt the ALTERNATIVE—namely—either to satisfy the demand, or to commit an act of Bankruptcy, by refusing to do so (see p. 50, *supra).* This Act has the advantage of being proveable with great certainty as well as facility.

THE ALTERNATIVE PROCESS.*

When a trader owes a debt of *any amount*, large or small, the Creditor may proceed shortly, unless he obtain payment, or security for payment, to cause the Trader to commit an involuntary act of Bankruptcy (see p. 50, *supra)*, by the following means:

Let an account in writing, with a notice requiring payment, filled according to the Form herein given, be served on the Trader by some person, on behalf of the Creditor, who can read and compare writing, and let him keep a copy thereof, to the truth of which he can afterwards depose. The account and notice must be served *personally* (see sec. 11 of new Act); for, although by sec. 72, the Commissioner is empowered to grant substitution of service in most instances, where persons keep out of the way, yet this not " issuing" from a Commissioner is not within the section. The affidavit also avers *personal* service.

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* The Editor has, perhaps, taken a liberty in calling this by the above name; but it is done, merely, for shortness and readiness of distinction.

To E. F. of

The following are the particulars of the Demand of the undersigned A. B. of against you the said E. F. amounting to the sum of £

(here copy the account.)

Take notice that I the said A. B. hereby require immediate payment of the said sum of £

Dated this day of in the year of our Lord 18

Signed A. B.

Let the Creditor then, together with the person who served the notice, make the following affidavit before the authorities, as above directed, taken from Schedule A, No. 1, of 12 & 13 Vic., c. 107:—

A B, of , and C D, of , severally make oath and say; and first this deponent, A B, for himself, saith that E F, of *(describe fully)* is justly and truly indebted to this deponent in the sum of pounds, for, &c., *(stating the nature of the debt with certainty and precision)* and this deponent further saith that the said E F, as this deponent verily believes, is a trader within the meaning of the statutes relating to Bankrupts, or some or one of them, and resides at ; and that an account in writing of the particulars of the demand of the said A B, amounting to the sum of pounds, with a notice thereunder, written in the form prescribed by the statute in that case made and provided, purporting to require immediate payment of the said debt is hereunto annexed, and this deponent C D, for himself, saith, that he did on the day of , instant (*or* last), personally serve the said E F with a true copy of said account and notice.

Sworn, &c.

Let the affidavit be filed in the office of the Secretary of Bankrupts at the Four Courts, Dublin (s. 13 of same). A Summons is then granted, which is to be served on the trader. If he keeps out of the way, that alone may constitute an Act of Bankruptcy; but lest a question may be raised afterwards as to the intent thereof, seepages 29, &c.; then, under s. 72 of same Act (which see), provision is made for substitution. His appearance upon such summons, or non-appearance at the day prescribed, will then be the means of either satisfying the Creditor's demand, or compelling the trader to commit an act of Bankruptcy (see p. 50, *ante*). There are other modes of arriving at the same end, but it would be unnecessary, as well as tedious, to enumerate them.

AFTER AN ACT OF BANKRUPTCY.

Supposing an Act of Bankruptcy to have been committed and to be capable of proof, the next step for the Creditor, provided his debt amount to £50 or upwards, is to make an Affidavit before any of the like authorities, setting forth that the trader is justly and truly indebted to him in the sum of £50, or upwards. Blank forms are to be had at the stationers, and no stamp is necessary (see s. 115 of same Act). Great accuracy is required in filling the blanks in this affidavit. The variation of a letter in the name of the Bankrupt has been fatal—Ex p. *Ward*, 1 Rose, 314—or any mistake in his description—Ex p. *Layton*, 6 Ves. 434; Ex p. *Beckwith*, 1 Glyn. & J. 20; Ex p. *Lewis*, 3 M. D. & D. 93; 7 Jur. 244—or in the debt—in Re *Lees*, 3 Dea. 36; Ex p. *Thorpe*, 3 Mon. & A. 395.

As to a letter in the name —— it was decided that, generally speaking, an omission of a letter was of no importance; but in some names, such as *Smith*, or *Clark*, the exact mode of spelling formed the distinction, and proceedings were stayed, the name being *Clarke*, instead of *Clark*—Ex p. *Burridge*, 1 De G. 256—and as to description—the Commissioner refused to proceed with the fiat where the Bankrupt was described as J. W. of Todmorden, in the county of York, which was a parish extending into an adjoining county; but, on appeal, the chief justice held it a sufficient description, provided it should appear, on affidavit, that there was *no other person* in the same parish of the *same name* and *trade*—in Re *Woodward*, 1 De G. 99.

Before the recent Act abolishing the bond (s. 3) it was necessary to give a bond to the Lord Chancellor, in the penalty of £200. (See 6 Wm. 4, c. 14, s. 30, Ir.) This was conditioned for proving the debt as well before the Commissioner, as upon a trial of law, in case the Commission was contested, and for proving the party to have committed an act of Bankruptcy. It was also a security to the trader against a malicious suing out of commission, &c.; but now see 12 & 13 Vic., c. 107, s. 3, and note thereto.

The affidavit and, heretofore, the bond together, were called the *Docket*, and they were both lodged in the office of the Secretary of Bankrupts, at the Four Courts, and this lodgment or delivery of both together into the hands of the proper officer, was technically called *Striking the Docket*:[*] upon this occasion the party pays a fee of £2 10s.

By Rule 4 of Lord Ch. Sudgen's Orders in Bankruptcy, 1843, the persons striking a docket must order a Commission within 4 days, or else

[*] Docket, or Docquet—a short abstract of anything (Cow. Interp. West. Symb. Lib. 2, s. 106), perhaps originally *Dogget*: see 4 & 5 W. & M., c 20, *passim*; and see Ruff. Dict. By that Act all judgments to affect lands were to be entered into an *Alphabetical Dogget*, as if it were a word then in familiar use. Blackstone says, judgments Docquetted according to the statute, 2 Com. 511; and again, "docquetted, that is, abstracted and entered in a book, according to the directions of the statute 4 & 5 W. & M. c. 20."—3 Com. 397. A similar use is made of the word docket in Lord Erskine's "Orders in Bankruptcy, December 2, 1806:"—"No docket shall hereinafter be con-

any other person shall be at liberty to strike a new docket, &c. If 14 days are allowed to elapse without bespeaking a Commission, then the docket *expires*. See General Orders, *infra*.

The Petition and Commission.]—The petition and the commission are then engrossed on parchment, and are entirely the work of the office of the Secretary of Bankrupts, and with the drawing up of which the Creditor or his agent have nothing whatsoever to do. The materials were found in the affidavit made by the Creditor. When prepared, they are conveyed by the Secretary of Bankrupts from his office, and laid before the Lord Chancellor, who affixes his signature, together with the great seal, when they forthwith become the "Commission of Bankrupt." Generally the Petitioning Creditor's agent finds the commission ready for him on the second day after lodging the docket.

Delivery of the Commission to the Registrar.]—The next process is to deposit the commission with the Registrar in his office, which should be done without loss of time. The mode of effecting this is strictly set forth in Rule 2 of General Orders, which directs that the Commissioners shall be *immediately* transmitted by the Secretary to the registrars, to be by them laid before the Commissioners; and if not effectually proceeded on to an adjudication within 8 days after its date, where the alleged Bankrupt resides within 20 miles of the Castle of Dublin, or within 14 days if he resides beyond that limit, then the Commissioner shall return it, with a certificate endorsed thereon under his hand, to the Secretary's office, when the Commission shall be superseded at the expense of the person who sued it out. The time however may be extended by the Commissioner, if satisfactory cause be shewn upon oath, but such extended time shall not exceed 15 days, or 21 respectively.

The solicitor or attorney who sued out, is bound to pay the costs of the supersedeas in the first instance, with power to recover over against his client. This is the whole substance of Rule 2, which see however *infra*. The cost of a supersedeas is £6 16s. 6d. (*see Table of Fees*). The Registrar keeps an exact record of the day and hour at which the Commission is deposited. Subsequent proceedings shew the necessity of this accuracy.

The Fees payable on suing out the Commission, amount to £8 13s. 6d. which includes the foregoing sum of £2 10s.

To appoint a first meeting.]—On delivering the commission to the Registrar, a day of meeting is settled on, and summonses are taken out for witnesses, on each of which is paid a fee of half-a-crown, which will

sidered as struck until the same shall be entered in the docket book;" and words to the same effect are to be found in our own rules and orders, (1843), Order 4. This book was arranged in *alphabetical order*, so that a search for a Bankrupt's name was but a matter of a moment. Mr. Christian inclines to think the word docket a contradiction for "documentum," the letters *m* and *n* being left out, and supplied by strokes over the vowels. There is no question, from ancient charters still remaining, that "muster" was originally "monstratio militum;" see 1 Chr. B. L. 458.

It is unnecessary to explain the word *striking*, which is used in so many various senses in our language. In Legal phrase—*striking* a panel—a jury is *struck*—*striking* the circuits, &c. In mercantile—*striking* a balance, &c.

include four witnesses if necessary, upon this occasion a fee of £4 8s. 4d. is lodged, which is returned to the "Bankruptcy Fund."

Subsequent meetings may or may not be necessary, in which event additional summonses will be required.

At the first meeting.]—Prove the Petitioning Creditor's Debt, see page 57, *supra.* Prove the alleged Bankrupt to have been a person liable under the Bankrupt laws. See list of traders, page 18, etc.

Prove an act of Bankruptcy by a competent witness, (other than the Petitioning Creditor,) as upon a trial at law. If it consist of conveyance of trader's property, proof by subscribing witness, or if none, proof of handwriting will be necessary: see 1 Arch. Pr. B. R. 165, etc.; Arch. Pl. and Ev. 377; *Goss* v. *Tracy*, 1 P. Wms. 289,; *Burnett* v *Taylor*, 9 Ves. 381. A witness who could prove an act of Bankruptcy, having secreted himself, time was enlarged on affidavit: In re *Hayes*, 1 G. & J. 255: Ex p. *Fox*, 1. D. & C. 572.

The Adjudication.]—When the above matters are proved to the satisfaction of the Commissioner, he "shall thereupon adjudge such person or persons Bankrupt,"—(6 Wm. IV., c. 14, s. 37)—and the Commissioner "shall forthwith cause notice of such adjudication to be given in the Dublin Gazette, and shall thereby appoint two or more public sittings for the Bankrupt to surrender and conform, the last of which sittings shall be on the forty-second day, hereby limited for such surrender." Sec. 38 of same.

After Adjudication.]—The adjudication is a solemn act, it being the decision of the court, after having all the circumstances of the case that could be brought together by the Petitioning Creditor duly investigated by the Commissioner. Still it is but a *primâ facie* case, and therefore it is that, in England, the trader is allowed five days to dispute the adjudication, in order to obtain his protection: 5 & 6 Vic., c. 122, s. 23, Eng. By this section, the Bankrupt in England must have five day's notice before the adjudication can be advertised. This is given in order that he may come in and shew cause why the adjudication should not stand. This provision has not been extended to Ireland. After adjudication, therefore, the person and property of the Bankrupt instantly become subject to the Commissioner: and the Bankrupt must surrender "before three of the clock upon the forty-second day after notice thereof in writing, to be left at the usual place of abode of such person: 6 Wm. IV., c. 14, s. 130. In case of the trader's being in prison, the notice is personal, *ibid.* If he fail in surrendering at such time, then, under 12 & 13 Vic., c. 107, s. 44, he "shall be deemed guilty of felony, and be liable to be transported for life, or for such term," &c. Under the following section, the Commissioner, *now*, and not the Lord Chancellor, as heretofore, can enlarge the time for surrendering; but see the sections referred to.

The warrant to the messenger.]—Upon the adjudication of the Court, as above, viz., that the trader has committed an act of Bankruptcy, the Commissioner executes his warrant to the messenger, authorising him to seize (see 6 Wm. IV., c. 14, ss. 40, 41,) upon the body or property of the Bankrupt. By these sections he is armed with full authority "to break open any house, chamber, shop, warehouse, door, trunk, or chest of any Bankrupt, where such Bankrupt, or any of his property, shall be reputed to be, and seize upon the body or property of such Bankrupt;" and, in Ireland, any one obstructing the messenger, is "guilty of a misdemeanour," and liable to "fine and imprisonment, with or without hard labour:" 12 & 13 Vic., c. 107, s. 50, Ir. The warrant must be under hand and seal of a Commissioner: see s. 71 of same; and by rule 3 of General Orders (1843), the Petitioning Creditor is bound to save harmless the messengers, in the event of any action brought against them to try the validity of the commission: see General Orders, *infra.*

The Surrender.]—Under 6 Wm. IV., c. 14, s. 130, *et seq.* Ir.; and also 12 & 13 Vic., c. 107, s. 42, *et seq.* Ir., the whole of the duties and obligations of the Bankrupt are set forth. They are simple, where no desire to conceal or misrepresent exists in the mind of the Bankrupt; but exceedingly stringent, in the event of any attempt to mislead the court, or deceive or defraud the Creditor.

The time limited by the statute for the Bankrupt's surrender, is 3 of the clock on the 42nd day after the service of the notices set forth in s. 130, as above: but it is advisable, for many reasons, that the Bankrupt should appear as early as possible, and give what assistance he is able, in order to defeat unjust claims, and thereby save the estate for the benefit of his Creditors, an event which the law has wisely ordained should be also directly for the benefit of the Bankrupt himself. See allowance to Bankrupts, 12 & 13 Vic., c. 107, s. 61, Ir.

If the Bankrupt do not surrender at the prescribed time, he is then guilty of felony, and liable to transportation for life, or for any period not less than seven years; or to imprisonment and hard labour for the same period.

Upon an early application, the time for surrender may be extended, and this is called

Enlarging the time of Surrender.]—This was peculiarly the province of the Lord Chancellor, see 6 W. IV., c. 14, s. 131, Ir.; but now the Commissioners are empowered by 12 & 13 Vic., c. 107, s. 45, Ir., to enlarge the time, but the order must be made 6 days, at least, before the day on which the Bankrupt ought to have surrendered: and the same limit of 6 days is prescribed in the above section of the act of W. IV.; but yet it has been held that the Lord Chancellor has jurisdiction, even *after* the time for surrender has passed, to direct the Commissioners to accept a surrender: in Re *Morgan*, 1 Drur. & W. 582.

The Lord Chancellor will exercise his discretion, and enlarge the time in case of illness, 2 Bro. C. C. 47; or of unavoidable necessity, 15 Ves. 1; or accident, Cox, 48—12 Ves. 496; or being abroad at the time, 10 Ves. 183. But not if he purposely absent himself, 1 Ves. 195; unless where he hid through apprehension of some criminal proceeding: 1 Gl. & J. 223.

Whilst coming to surrender, the Bankrupt is privileged from arrest under 6 W. IV., c. 14, s. 136, Ir.; but not if he be tardy; as when he arrived in Dublin from Liverpool on the 20th, and was arrested on the 23rd, arrest held good: in Re *Christopher Wall*, Ir. Jur. 1.

CHAPTER VI.

PROOF OF DEBTS.

A Creditor is obliged to say whether he has or has not a security—Ex p. *Grove*, 1 Atk. 104—and to produce it, and the court marks it as having been exhibited. In England, if a Creditor have a judgment, he is obliged to exhibit the office copy of it: Ex p. *Concannon*, Cooke, 4 Ed. 126; Ex p. *Williamson*, 1 Atk. 83. But to save expense, the paper of final judgment has been considered sufficient: 1 Mon. & Ayr. B. L. 184.

When the Debt accrued.]—Before 46 Geo. III., c. 135, s. 2, U. K., the debt must have accrued before the act of Bankruptcy: *Bamford* v. *Burrell*, 2 B. & P. 1; *O'Brien* v. *Grierson*, 2 Ball & B. 334. The provision was incorporated in 6 Wm. IV., c. 14, s. 58, enabling Creditors to prove the debt, if really and *bonâ fide* contracted, although a prior act of Bankruptcy existed, provided the Creditor had no *notice*. Under 6 Geo. IV., c. 16, s. 47, Eng., same as 6 Wm. IV. above, it was held, that, by the act of Bankruptcy therein, was meant, that act on which the commission was issued, that is, if the debt was contracted before that particular act of Bankruptcy, though *with notice* of a prior act, it was proveable: Ex p. *Bowness*, 2 M. & S. 479. In a later case, the Court of Review held the contrary: Ex p. *Sharp*, 3 M. D. & D. 496.

Time of contracting.]—It may be after Bankrupt left off trade: *Megott* v. *Mills*, 12 Mod. 159; 1 Lord Raym. 287. If barred by the statute of limitations, although Bankrupt admit non-payment not proveable: Ex p. *Dewdney*, 15 Ves. 479; Ex p. *Seaman*, idem.; Ex p. *Roffey*, 2 Rose, 245. But the statute does not run after commission: Ex p. *Ross*, 2 G. & J. 46. 336. An agreement for composition where default does not preclude from proving balance of the original: Ex p. *Bateson*, 1 M. D. & D. 289. Debts of Bankrupt's wife incurred before marriage, are proveable: *Miles* v. *Williams*, 1 P. Wms. 249.

When due and payable.]—A debt is said to be due the instant it has existence as a debt, though payable at a future time, Arch. B. L. 125. As a general rule, debts must be due at the time of the act of Bankruptcy: *Bamford* v. *Burrell*, 2 B. & P. 1. School money payable half yearly not proveable, the time not having expired at the time of the act of Bankruptcy. Between Bankruptcy and certificate, Bankrupt endorsed two notes, *held* certificate no bar to an action, therefore, notes not proveable under commission—*Brix* v. *Braham*, 1 Bing. 281—and see *Birch* v. *Sharland*, 1 T. R. 715. By 6 Wm. IV., c. 14, s. 58, same as 6 Geo. IV., c. 16, s. 47, "every person with whom any Bankrupt shall have really and *bonâ fide* contracted any debt or demand (see *Robinson* v. *Vale*, 4 Dow. & R. 432; 2 B. & C. 762,) before the issuing the commission against him, shall, notwithstanding any prior act of Bankruptcy committed by such Bankrupt, be admitted to prove the same, and be a Creditor under such commission, as if no such act of Bankruptcy had been committed, provided such person had not, at the time the same was contracted, notice of any act of Bankruptcy, by such Bankrupt committed;" but see last page: Ex p. *Bownes*. Where goods sold, to be paid for by a bill at four months, and no bill given, debt proveable before expiration of the time: *Cothay* v. *Murray*, 1 Camp. 335. Trader becoming Bankrupt before the delivery of a quantity of oil, the price having then fallen, loss sustained by the vendors not a debt proveable: *Boorman* v. *Nash*, 9 B. & C. 145.

Covenants.]—To pay a sum certain, at a time certain, whether before or after Bankruptcy, proveable; if after, then a rebate of interest—*Charlton* v. *King*, 4 T. R. 156—but to pay on demand, or request, and no such made before Bankruptcy, not proveable: Ex p. *Eyre*, 3 M. D. & D. 12. To build houses, &c., not proveable, though a covenant broken before Bankruptcy: *Bannister* v. *Scott*, 6 T. R. 489. Where consideration arise after the Bankruptcy, not proveable, not *debitum in presenti*, see *Miller* v. *Wittenbury*, 1 Camp. 428.

Bonds.]—If for payment of sums certain, at a time certain, no matter when payable (see 6 Wm. IV., c. 14, s. 62, Ir., same as 6 Geo. IV., c. 16, s. 51, Eng., to which the following decisions apply—Ex p. *Fisher*, 3 Mad. 159; Ex p. *Rowlat*, 3 Rose, 416; Ex p. *Cotrell*, Cowp. 742; *Brooks* v. *Lloyd*, 1 T. R. 17; Ex p. *Winchester*, 1 Atk. 116; Davies, 530), may be proved under the commission, deducting a rebate of interest at 6 per cent. (England 5 per cent.) If payable on demand and interest paid, bond proveable: Ex p. *Spurling*, Cook, 169; and see Arch. 127; De Gex. 262.

Bills of Exchange and Promissory Notes.]—As a general rule, where the Bankrupt is liable to the holder as acceptor, drawer, or endorser, where the instrument is over due, the debt is proveable, but not if not stamped where required—Ex p. *Manners*, 1 Rose, 68—payable to A B, "or order on demand," is not payable to bearer on demand, therefore not within the class of notes in Stamp Act not chargeable with the lower duty: Ex p. *Robinson*, 1 Dea. & C. 275. If notice of dishonour to the Bankrupt or assignees be necessary, and not given, not proveable: Cook, 189, 190; *Rhode* v. *Proctor*, 6 Dow. & R. 610; 4 B. & C. 517; see also *Bickerdike* v. *Bollman*, 1 T. R. 405; and see *Gee* v. *Brown*, 2 Str. 192; *Blessard* v. *Hirst*, 5 Burr. 2860; *Goodall* v. *Dolley*, 1 T. R. 712; *Rodgers* v. *Stephens*, 2 T. R. 713; *Nicholson* v. *Couthit*, 2 H. Bl. 609; *Walwyn* v. *St. Quintin*, 1 B. & P. 652; Bayley on bills. If due after Bankruptcy, and before choice of assignees, notice of dishonor must be given to Bankrupt, or to messenger in possession, but to assignees if chosen—Ex p. *Johnson*, 1 M. & A. 622; 3 Dea. & C. 433; Ex p. *Chapple*, 3 Dea. 218; 3 Mon. & A. 490—but now, since recent Act, as to Official Assignees, quere notice, and consult Rules and Orders (1849), nos. 16, 17, 18; and although acceptor declared he had no provision, notice must be given: Ex p. *Bignold*, 2 Mon. & A. 633; 1 Dea. 712. Where no effects of drawer in hands of acceptor during currency, no notice necessary, *ibid;* so, also, if time given to acceptor or drawer without consent of Bankrupt or assignees: Ex p. *Holden*, Cooke, 189; and see *Tindall* v. *Brown*, 1 T. R. 167, 2 T. R. 186; *Walwyn* v. *St. Quintin*, 1 B. & P. 652; *English* v. *Darley*, 2 B. & P. 61; *Clarke* v. *Devlin*, 3 B. & P. 363; *Steevens* v. *Lynch*, 12 East, 38; *Gould* v. *Robinson*, 8 East. 576. So also, if holder compound with acceptor, without consent of Bankrupt or assignees: Ex p. *Smith*, 3 Bro. 1;

Ex p. *Gifford*, 6 Ves. 805; Ex p. *Slater*, 6 Ves. 146; Ex p. *Smith*, Cooke, 191; Ex p. *Wilson*, 11 Ves. 419. Bill passed by Bankrupt, but not endorsed, not proveable: Ex p. *Blackburn*, 10 Ves. 204; Ex. p. *Hustler*, 1 Glyn, & J. 9; and see Ex p. *Dixon*, Cox, 194; but if given to the holder for goods sold, &c., then the original debt proveable: Ex p. *Blackburn*, 10 Ves. 204; Ex p. *Rathbone*, 1 Buck. 215. If holder take up his accommodation endorsement he may prove for the amount: Ex p. *Hustler*, 3 Mad. 117; Buck. 171; 1 Glyn & J. 9; or if he endorsed to get it discounted for Bankrupt, and then himself became Bankrupt, assignees may prove for amount: Ex p. *Robinson*, Buck. 113; see Arch. B. L. 129; De Gex. 266.

Damages, Costs, &c.]—By 6 Wm. IV., c. 14, s. 69, (same as 6 Geo. IV., c. 16, s. 58,) "if any person shall have obtained any judgment, decree, or order in any action at law, or cause, or matter in equity against any party who shall thereafter become Bankrupt, for any debt or demand in respect of which such person shall prove under the commission, such person shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the Bankruptcy:" upon this subject see Arch. B. L. 135; De Gex. 297. 302.

Interest.]—See introduction, page 11, citing 6 Wm. IV., c. 14, s. 68, and 12 & 13 Vic., c. 107, s. 63, as well as 6 Geo. IV., and s. 180 of Consolidation Act, (1849) Eng. Compound interest, although not the subject of a contract *a priori*, yet, in money loans, if it be the mode of dealing between the parties, proveable: Ex p. *Bevan*, 9 Ves. 223; *Caliot* v. *Walker*, 2 Ans. 495. A surety paying, after Bankruptcy, a Creditor who proved, merely stands in his place, therefore no interest in case of surplus beyond the Creditor's own claim: Ex p. *Harston*, 2 Glyn & J. 36.

Rent.]—Before act of Bankruptcy landlord may distrain for whole amount, and even after the act, although the messenger be in possession: Ex p. *Plumber*, 1 Atk. 103; Ex p. *Jaques*, *id.* 104, cit.; Ex p. *Dillon*, *id.* cit. *Buckley* v. *Taylor*, 2 T. R. 600; *Briggs* v. *Sowry*, 8 M. & W. 729; but by 6 Wm. IV., c. 14, s. 89, Ir., same as 6 Geo. IV., c. 16, s. 74, Eng., the distress is limited to one year's rent due prior to the date of the commission, after which the overplus due is proveable, *ibid.*; if he allow the goods to leave the premises, thereby loosing his remedy, he may prove for all due, up to the date of the commission: Ex p. *Desharmes*, 1 Atk. 103. Where a landlord distrained before Bankruptcy, and goods replevied, pending the replevin, tenant and his pledges all became Bankrupt, and the assignees possessed themselves of the goods so replevied—held, landlord lost his lien and must prove—*Braddyl* v. *Ball*, 1 Bro. 427—but he cannot distrain and prove, both, for same rent: Ex p. *Grove*, 1 Atk. 103. If after act of Bankruptcy tenant pay landlord, who is about to distrain, payment cannot be impeached—*Stevenson* v. *Wood*, 5 Esp. 200—but where the landlord was plaintiff in an execution levied after act of Bankruptcy, and out of the proceeds of goods sold on the day of the commission, and day after, the sheriff paid a year's rent—held, the assignees could recover the amount thereof: *Lee* v. *Lopez*, 15 East, 230.

Servants' Wages and Apprentice Fees.]—See Introduction, page 10; see also notes to ss. 40 & 41 of 12 & 13 Vic., c. 107, *infra;* and see Arch. B. L. 140; De Gex, 260.

Annuities.]—See 6 Wm. IV., c. 14, ss. 65 & 66, same as 6 Geo. IV., c. 16, ss. 54, 55. Formerly no more than the arrears due at the time of the Bankruptcy was proveable, but now, by the above statute, no matter by what assurance it may have been secured, or whether there were or not any arrears then due, the value of the annuity is proveable. This is to be ascertained by the Commissioners, regard being had to the original price as well as the diminution by lapse of time: see sections cited. The computation in this case is a matter of difficulty, and decisions vary. Formerly, where a person in bad health paid £8000 for an annuity for his own life, and he recovered, and the grantor became bankrupt, and an actuary valued at £10,000, the Lord Chancellor allowed it: Ex p. *Thistlewood*, 1 Rose, 290. This could not be done now: Ex p. *Fisher*, 2 Glyn. & J. 102—nor is the state of the market to be considered in estimating the value: Ex p. *Webb*, 2 Glyn. & J. 29. An annuity in consideration of marriage—Ex p. *Anandale*, 2 Mon. & A. 19—contingent on surviving her husband, proveable: Ex p. *Van Heythusen*, 1 Dea. 360; 2 Mon. & A. 519; Ex p. *Broadley*, 6 Jur. 200. So also where payable while annuitant continued certain works—Ex p. *Parratt*, 1 Dea. 696; 2 Mon. & A. 626—but Bankrupt as surety for payment of annuity, default not made till after Bankruptcy, not proveable under the above section: *Thompson* v. *Thompson*, 2 Scott, 266; 2 Bing. N. C. 168; see Arch. B. L. 143.

Contingent Debts.]—These were formerly not proveable: 2 P. Wms. 395; 1 Atk. 114; 2 Str. 867; 2 Ld. Raym. 1546; 3 Wils, 270; 3 T. R. 435; and see Arch. B. L. 144; De Gex, B. L. 235.

But now by 6 Wm. IV., c. 14, s. 67, same as 6 Geo. IV., c. 16, s. 56, "Any debt payable upon a contingency, which shall not have happened before the issuing of such commission, the person with whom such debt has been contracted may, if he think fit, apply to the Commissioner to set a value upon such debt, and the Commissioner is hereby required to ascertain the value thereof." After this the amount is proveable, and if the value be not ascertained before the contingency occurs, then after its occurrence the Creditor may prove in respect of his debt, and receive his dividend. But in this case the Creditor must not have had notice of the act of Bankruptcy. Under this section, a right to maintain an action of covenant for unliquidated damages is not proveable—*Attwood* v. *Partridge*, 12 Moore, 431; 4 Bing. 209—nor are the costs where the Bankrupt obtains his certificate between verdict and judgment, proveable—*Bire* v. *Moreau*, 12 Moore, 226; 4 Bing. 58—but debts merely defeasible on a contingency are proveable: *Staines* v. *Plank*, 8 T. R. 389.

Proof by Creditors holding Securities.]—By 6 Wm. IV. c, 14, s. 126, same as 6 Geo. IV., c. 16, s. 108, Eng., no creditor, having security for his debt, or having made any attachment in Dublin, or any other place, by virtue of any custom there used, of the goods and chattels of the Bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure upon, or any mortgage of, or lien upon any part of the property of such Bankrupt before the Bankruptcy, provided that no Creditor, though for a valuable consideration, suing out execution upon any judgment obtained by default, confession, or, *nil dicit*, shall avail himself of such execution to the prejudice of other fair Creditors, but shall be paid rateably with such Creditors.

Mr. Archbold, page 160, thinks there is a want of certainty in this clause, arising from a doubt how far "goods and chattels of the Bankrupt" be governed by "security or attachment," or security *and* attachment, both together.

Where the Creditor holds a security from the Bankrupt alone, he must give up that security before he can prove: Cooke, 144; Ex p. *Bloxham*, 6 Ves. 449. 600; Ex p. *Barclay*, 1 G. & J. 272; but see Ex p. *Smith*, G. & J. 605. Where one obtained goods for part of his debt just before Bankruptcy, he was obliged to give up the goods before he could prove—Ex p. *Smith*, 3 Bro. 46—but when seized under execution, before act of Bankruptcy, the Lord Chancellor allowed proof of residue, even whilst assignees disputed the validity of the execution: Ex p. *Hopley*, 2 J. & W. 220; 1 Glyn. & J. 63; but see 1 J. & W. 423, *contra*. A Bankrupt making an assignment to secure a debt with interest afterwards, gives a promissory note, part of the consideration of which was the arrears of interest, security must be given up in order to prove the note—Ex p. *Clarke*, 1 M. D. & D. 622—and once given up and proved Creditor could not retract—Ex p. *Downes*, 18 Ves. 290; 1 Rose, 96—and proving without making known such security, proof expunged: Ex p. *Hossack*, Buck. 390. Circumstances may exist where a debt may be proved, and a bond pledged as security for the debt be also proceeded on; Ex p. *Smith*, 2 Glyn. & J. 105.

Mortgagees.]—By 6 Wm. IV., c. 14, s. 84, Ir., same as 6 Geo. IV., c. 16, s. 70, Eng., it is enacted that where a Creditor has a mortgage from the Bankrupt, or any pledge, on condition of future redemption, the assignees may, before the time limited, make tender or payment just as the Bankrupt might have done, and then dispose of the mortgaged premises for the benefit of the Creditors.

And the assignees must convey the Equity of Redemption if the premises be insufficient to pay the debt, they getting a release: Ex p. *Dickson*, 1 Ir. Jur. 250.

If it be forfeited, and the Creditor apprehends it will meet his full debt, he can apply to the Commissioner to have the mortgage sold, and now he may be allowed to bid (see section 67 of new Act, and also Introduction, page 12); or he may file a bill against the assignee for a foreclosure: *Bainbridge* v. *Pinhorn*, Buck. 135. If he prove all his debt, exhibiting a mortgage for a part and receiving a dividend, he forfeits his mortgage: Ex p. *Eggington*, Mont. 72; but see also Ex p. *Sherrington*, 1 M. D. & D. 195.

A mortgage, although not registered under the statute, has a priority over a subsequent certificate of appointment of assignees duly enrolled: *Leech* v. *Law*, 1 Ir. Jur. 41.

Sale of Mortgage.]—By Order 7 of General Orders in Bankruptcy (1843), persons claiming to be mortgagees applying to the Commissioners, an inquiry is instituted as to the validity of the claim, and if no objection found, then the Commissioners take an account of the principal interest and costs due, and of the rents and profits received if the mortgagee had been in possession. If the premises be to be sold, due notice must be given in the public papers when, where, and how; the proceeds to be applied, first in payment of the expenses incurred by the sale, and then in satisfaction of the mortgagee's claim. If not sufficient, mortgagee to be admitted a Creditor under the commission for such deficiency, and to receive rateably in proportion with the rest, but not disturbing any dividends already made. In this order a provision is made whereby the assignee of the Bankrupt is allowed to draw the attention of the court, in the event of a mortgagee choosing to file a bill of foreclosure to the increase of costs occasioned thereby. Previous to this order, in the case of *Bernard* v. *Sadlier*, 4 I. Eq. R. 61, the mortgagee was held entitled to the costs of a foreclosure suit, after a notice from the assignee requiring him to proceed to a sale, such notice not offering to pay the costs incurred up to the time of its service. In that case the Court stated that the proper course for the assignee would have been an application to the Court to stay the plaintiff from proceeding, and to compel him to come in under the General Order, ibid. 63. This Order has been lately held to apply to Equitable Mortgages: in Re *M'Cullagh*, 11, I. Eq. R. 466.

Assignees have always the conduct of the sale—Ex p. *Barnett*, 3 M. D. & D. 662—but not if he be a mortgagee; a solicitor will then conduct—Ex p. *Lees*, 2 D. & C. 360—if assignees being present at the sale, get an order for a second sale, and that they produce less, they are liable to the mortgagee for the difference. But if the mortgagee himself apply, he waives his claim—Ex. p. *Baldock*, 2 D. & C. 60—and he must satisfy a distress for rent: Ex p. *Cocks*, 3 D. & C. 8.

The Commissioner could compel a mortgagee to produce his mortgage deed—6 Geo. IV., c. 16, ss. 33 & 34, Eng.—and commit him for refusing: Ex p. *Mather*, 1 G. & J. 342. The 6 Wm. IV., c. 14, ss. 45, & 46, Ir., contains the same provision.

Where a mortgage contained a power of sale, not to be exercised for five years, if interest paid; held that mortgagee on petition, might have common order for sale, and liberty to prove for residue: Ex p. *Bignold*, 3 Dea. 151; Ex p. *Bacon*, 2 D. & C. 184.

All *personal securities* which are merely pledged or deposited by the Bankrupt with the Creditor, may be directed as well as mortgages to be sold: Ex p. *Hillier*, Cooke 123. In this case the assignees alone are entitled to insist on the sale: Ex p. *Troughton*, Cooke, 124; Ex p. *Gardiner*, ibid.

A mortgagee has a right to a sale of an estate in the same plight as it was before the Bankruptcy; and where the Bankrupt, before choice, was proceeding to cut down underwood which he mortgaged, he was restrained by injunction: *Hampton* v. *Hodges*, 8 Ves. 105.

The court will not postpone sale on the application of assignees, if mortgagee object: Ex p. *Belcher*, 2 D. & C. 587.

Mutual Debts.]—By 6 Wm. IV., c. 15, s. 61, same as 6 Geo. IV., c. 16 s. 50, Eng., where there has been mutual credit or debts between the Bankrupt and others, the Commissioner shall state the accounts between them, one against another, notwithstanding any act of Bankruptcy prior to credit given or debt contracted, and shall strike a balance thereon, provided the Creditor had no notice of the act of Bankruptcy committed, "and what shall appear due on either side, on the balance of such account, and no more, shall be claimed or paid on either side respectively." As to notice, if given by some, though not all of a co-partnership, it is sufficient: *Hawkins* v. *Whitten*, 10 B. & C. 217; *Dixon* v. *Gass*, 1 B. & Ad. 343. The mutual credits must be given before the Bankruptcy: *Hewison* v. *Guthrie*, 3 Scott, 298. Promissory note by endorsement over, after issuing, not proveable by holder as a set off—*Marsh* v. *Chambers*, 2 Str. 1234; and see *Dixon* v. *Evans*, 6 T. R. 57—and even before issuing, where indorser and indorsee had notice of Insolvency—Ex p. *Stone*, 1 Glyn & J. 191—this, however, was under the old statute, for by the present statute, notice of Insolvency is no ingredient, as in the case of *Hawkins* v. *Whitten* above, where there was notice of Insolvency, although not of an act Bankruptcy actually committed. The debt must be due by the Creditor to the Bankrupt (whether payable or not, is immaterial), before the act of Bankruptcy on which the commission is founded: *Abbott* v. *Hicks*, 7 Scott, 715. A banker paying on account of a Bankrupt after notice of Bankruptcy, cannot set off: *Vernon* v. *Hankey*, 2. T. R. 113; 3 Bro. 313; and see *Raphael* v. *Birdwood*, 5 Price, 604. Untaxed costs had been no set off—Ex p. *Rhodes*, 15 Ves. 539—but now being proveable under sec. 69 of 6 Wm. IV., c. 14, they may be a subject of set off: see section, and see Arch. B. L. 138, and further on the subject, ibid 150.

Expunging and reducing proofs.]—Before 6 Wm. IV., c. 14, s. 71, the same as 6 Geo. IV., c. 16, s. 60, Eng., the commissioner had no power to expunge without consent—Ex p. *Graham*, 1 Rose, 456—the remedy was by Petition to the Chancellor. Under this change, however, even the Petitioning Creditor's debt may be expunged—Ex p. *Neale*, 2 Gly. & J. 308—fraud is a good ground for expunging—Ex p. *Cawthorne*, 2 Rose, 186; 15 Ves. 260—the concealment of securities, a ground: Buck. 390. Statute of Limitations no objection to expunging, nor to refunding dividends—1 Mon. & A. 60; 1 Dea. & C. 556—and the Bankrupt's examination receivable in evidence—4 D. & C. 404—and see the cases cited: Edens, B. L. 376, and Archbold, 192. It does not follow that if a debt be expunged, the dividends must be refunded: Ex p. *Bolton*, 1 Mon. & A. 60; 1 D. & C. 556. After seven years, dividends not refunded, where received under a mistaken view of the law: Ex p. *Soper*, 2 Mon. & A. 55; 4 D. & C. 569. Proof not expunged, because Creditor held security, for the proof was an election to abandon lien: Ex p. *Rolf*, 2 Dea. 421; 3 Mon. & A. 305. Nor because the instrument wanted a stamp: Ex p. *Byrom*, 3 M. D. &

D. 53. A mere claim cannot be expunged: Ex p. *Dobson*, Mon. & A. 670. If application to expunge be unsuccessful, costs incurred may be ordered: Ex p. *Kirkaldy*, 4 Dea. & C. 52; 1 Mon. & A. 642. Where successful to a large amount, reasonable costs to Creditors: Ex p. *Margerison*, 4 Dea. 80.

The above are given as a few of the most useful cases, under the head of Proof of Debts. It may be well, however, to state that no change has taken place therein by the recent statute for Ireland, and that the law does not differ here from that laid down in the English books, which may, with safety, be consulted and followed upon the subject.

Those who are desirous of acquiring more minute and accurate knowledge, upon this very extensive topic, are directed to 1 Arch. B. L. 10th Ed. (1844) pp. 119 to 193; 1 Dea. B. L. by De Gex, 2nd Ed. (1848) pp. 191 to 331; Mont. & Ayr. B. L. by Koe & Miller, 2nd Ed. (1844) pp. 163 to 191, where the whole of the law is collected with great industry, and set forth in practical detail.

To give this subject at greater length, might be more satisfactory to the reader, but would be proportionally discreditable to the compiler, as it would amount to nothing short of direct and open plagiary, by appropriating the labors of eminent individuals, to purposes selfish and unprofessional.

CHAPTER VII.

Sect. 1. *Of Assignees generally.*
2. *Of Provisional Assignees.*
3. *Of Official Assignees.*
4. *Of Creditor's Assignees.*

SECTION 1.—OF ASSIGNEES GENERALLY.

Assignees, in Bankruptcy, were persons to whom the Bankrupt's estate was assigned, and in whom it vested for the benefit of the Creditors: 2 Bl. Com. 480. They were chosen by the major part in value of the Creditors, who proved their debts, but might have been, originally, appointed by the Commissioners, and afterwards approved or rejected by the Creditors, *ibid.* They were in the nature of trustees, and their authority became limited to the purposes of their trust: 1 Cooke, 287. So late as 6 Geo. IV., c. 16, s. 63, Eng., the Commissioners in England were directed to *assign* the personal estate to Assignees; but by 1 & 2 Wm. IV., c. 56, s. 25, Eng., a deed of assignment became unnecessary, it being enacted that all the Bankrupt's "personal estate and effects, present and future, which by the laws now in force may be assigned by Commissioners, acting in the execution of a commission, against such Bankrupt, shall become absolutely vested in, and transferred to, the Assignees or Assignee for the time being, by virtue of their appointment, without any deed of assignment for that purpose, as fully to all intents as if such estate and effects were assigned by deed to such Assignees and the survivor of them." The substance of these provisions, taken from the foregoing English statutes, were incorporated in the 6 Wm. IV., c. 14, ss. 74, 75, Ir., by which the law, in respect to Assignees with us, became assimilated with that of England, and no deed of assignment is any longer necessary in either country. And now whilst the origin of the name Assignee no longer exists, the name itself is preserved.

SECTION 2.—THE PROVISIONAL ASSIGNEE.

The period which necessarily elapsed between the adjudication, and the choice of Assignees by the Creditors, exposed the Estate to certain contingencies. For instance, an Extent might issue at the suit of the Crown, which would have the effect of binding the estate, if issued before it vested in assignees; or the Bankrupt's business might be of such a nature, as to require immediate care or constant superintendence. To remedy which, the Commissioner was empowered by 6 W. IV., c. 14, s. 55. Ir., to appoint a Provisional Assignee as often as he should think fit, who, however, was removable by the Creditors at the meeting for choice of Assignees. This provision was taken from 6 Geo. IV., c. 16, s. 45, Eng., with the exception that, in the Irish act, it was unnecessary for the Commissioner absolutely to *assign* by deed, the estate of the Bankrupt vesting directly by virtue of the appointment itself. This clause for the appointment of a Provisional Assignee, may now be said to be virtually, although not actually, repealed by the adoption of the Official Assignee, as copied from 1 & 2 W. IV., c. 56, s. 22, Eng.

SECTION 3.—THE OFFICIAL ASSIGNEE.

By 12 & 13 Vic., c. 107, s. 28, Ir., one or two persons, being Merchants, Brokers, or Accountants, or persons who are, or have been, engaged in Trade, shall be appointed by the Lord Chancellor to act as Official Assignees. One of these is to be the Assignee of each Bankrupt's estate and effects, together with the Creditor's Assignee, when chosen, *ibid.* He is removable at the discretion of the Lord Chancellor, who is empowered to supply his place by another upon any vacancy: s. 32;* and the Commissioner is to appoint an Official Assignee to act in the same Bankruptcy matter, subject to the Rules framed under s. 70, which see *post*, (Rules and Orders relating to Off. Assignees, 1 Nov. 1849).

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* Under this head all references to sections, mean to the sections of the Act 12 & 13 Vic., c. 107, Ir.; and references to Rules and Orders mean the Rules and Orders of 1 Nov. 1849, unless otherwise specified.

The appointment of Official Assignees is by the Lord Chancellor, under s. 28, and their duty in acting "together with the Assignee or Assignees, to be chosen by the Creditors," is laid down in the same section; and by Rule 1, "no Official Assignee shall, either directly or indirectly, carry on trade or business," or hold any other "office or employment" than that of Official Assignee.

They are to give security in the sum of £5000 in manner set forth in Rules 2 & 3; and on the first of January, in each year, or within a week thereof, they shall make a declaration as to the existence, or solvency, or change of residence of their sureties (Rule 5); and of their death or insolvency, if such take place, immediate notice shall be given, in writing, to the Commissioners: (Rule 6.)

Books to be kept.]—Under Rule 12 they are bound to keep the following books:—

1. The Commission Book.
2. The Bankrupt's Books' Register, containing a list and description of all the books delivered to such Official Assignee under each estate.
3. The Register Land Book.
4. Debtor and Personal Property Book.
5. Bill Book.
6. Fair Cash Book.
7. Audit and Dividend Book, together with such other books as may be necessary for the clear and satisfactory discharge of his duties as Official Assignee.

At foot of the Rules are appended a Schedule, which gives two Forms of letters for the instruction of the Official Assignee. The first is to be directed to the Bankrupt, upon his appointment over the estate, informing him thereof, and requiring him to deliver in forthwith, a list of all his Creditors, according to a printed form, which is the same as that hitherto sanctioned by the Court of Bankruptcy; and also notifying to him the necessity of applying himself to the preparation of his Schedule and Balance Sheet; and further informing him where he shall find his Trade Books, which had been seized by the messenger, &c.

The second is a Form of Circular to each of the Debtors, notifying the amount and nature of the Debt, by reason of which he is returned as a Debtor to the estate.

The Official Assignees' duty, with regard to those communications and their results, is fully set forth in Rules 14 and 15.

Making Estate available.]—Under Rule 19 this duty devolves particularly upon the Official Assignee, who is to use all diligence and energy in collecting in the debts due to the estate, and constantly communicating with the Commissioners upon the subject; and, by Rule 23, when he has succeeded in calling in £100 belonging to any one estate, he shall give notice thereof to the Creditors' Assignees.

Making Lodgments in the Bank.]—When the amount received upon any estate exceeds £50, he must lodge the excess forthwith in the Bank of Ireland, to the joint credit of himself and the Creditors' Assignee, and he is never to hold in his hands more in the aggregate, for all the estates over which he is appointed, than £250, under a penalty of £20 per cent. per annum on the excess, and at the risk of dismissal: (Rule 28.)

Cheque Book.]—He is to keep a Cheque Book for each of his estates, and to initial each cheque before delivering it to the Creditors' Assignee for signature (Rule 22), preserving the date and all particulars on the Block (Rule 23). At what time the cheque is to be filled, see Rule 35; and in what manner. (Rule 36.)

When Dividend declared.]—The Creditors' Assignee, together with the Agent to the commission, is to make out Three Lists of the Creditors in the order of their proofs, with dates, amounts, &c., and stating whether same be a first or other dividend, and sign and date these three Lists, and deliver same to the Official Assignee, who, after due examination and computation of the share to which each creditor is entitled, shall sign and date same, keeping one for himself, and delivering the others to the agent, who shall place one of the two on the File, and post the other in the Court. (Rule 34.)

Notice of Dividend.]—Notice thereof within one week after, is to be published in the newspapers, if so directed by the Commissioner, and notified by a circular to the Creditors through the post office, giving all necessary particulars. (Rule 37.)

Payment to Creditors.]—Creditors holding Securities must produce them to the Official Assignee, to be marked by him with the amount of the dividend thereon, previous to delivering the Dividend Cheque, the Official Assignee taking the Creditor's receipt. In the event of non-production of the security, the Creditor to be examined on oath before the Commissioner, and also to indemnify the Official Assignee. (Rule 38.)

Remuneration.]—A provision exists in s. 37, for remuneration to the Official Assignees for their labours. The Commissioner is given the power of apportioning such sum as may be "just and reasonable," according to the services bestowed and the amount of the Bankrupt's property, taking care that it "shall always be made by way of per centage on the total amount of the monies realised," a proviso not to be found in the corresponding enactments 1 & 2 Wm. IV., c. 56, s. 57, Eng., nor in 5 & 6 Vic., c. 122, s. 51, Eng., which respectively relate to the remuneration of the town and country Official Assignees. Under Lord Brougham's Gen. Rules and Orders, Jan. 12, 1832 (Rule 27), it was a *recommendation* to the Commissioners to allow the Official Assignee 1 per cent. on the monies *received* by him, and 1½ per cent. more on the monies *to be divided*, at the same time subject to be increased or diminished by the Court of Review. As yet, no fixed per centage has been determined in any of the foregoing Rules and Orders.

Authority.]—The Official Assignee is restricted from in any manner interfering with the Creditors' appointment or removal of a solicitor or attorney, or with the time and manner of effecting a sale of the property (s. 31), although it is he *alone* who is to possess and receive the proceeds thereof, and the rents and profits of the estate (s. 30); and even in matters pending at the passing of the Act, the Creditors' Assignees are obliged to deliver over every thing whatsoever in their possession and custody, as such, to the Official Assignee upon his appointment, and at that moment the estate vests jointly in him and them together (s. 33), yet until the appointment of the Creditors' Assignee, he can act alone as fully as both can afterwards act jointly, even so far as selling the estate, if so directed by the Commissioner. (s. 34.)

The sections of the recent statute more particularly referring to the Official Assignees and their duties, are ss. 28 to 37 inclusive, which see, and notes at foot thereof.

The above are the principal points of practice respecting the duties of the Official Assignee, as far as regards the suitors in court. There are many other points which are entirely for his own guidance; and the reader is referred, for greater accuracy, to the Rules themselves, which are published herewith. It would be difficult to enter more minutely into the different subjects comprised in them, without recopying the entire of the 40 Rules.

THE CREDITOR'S ASSIGNEES.

By Rule 39 the Creditor's Assignees are declared not to be in the slightest degree exonerated from any part of their duty as such, and especially from that of exercising a general superintendence over the whole of the proceedings, and of making the estate available for the benefit of the Creditors.

Time and mode of choosing.]—It will be seen, on reference to page 62, *supra*, that upon the Commissioner "adjudging" the party a Bankrupt, he is to "appoint two or more public sittings for the Bankrupt to surrender," under 6 W. IV. c. 14, s. 38, Ir. By s. 72 of same act, the choice of Assignees shall take place at the *first* of these sittings. This election of Assignees is sometimes a matter of mutual agreement, and no difficulty occurs about the appointment. At other times there may be a considerable contest. When it is contested, care should be taken to see that no Creditor votes who is not properly qualified. The Statute declares that all Creditors, *who have proved* debts to the amount of £10 and upwards, shall be entitled to vote, (s. 38 above); and they may vote by proxy, provided the proxy be authorised by letter of Attorney, and the execution of the letter be proved on oath or by affidavit, as the case may be, (see s. 38); and the choice shall be by the major part *in value* of the Creditors so entitled to vote, (same s.) This choice is subject to the Commissioner's veto, and they must continue voting and electing until he approves.

Their Rights.]—It has been observed above, that the Official is the sole Assignee until the Creditor's Assignee is chosen. As soon, however, as the Creditor's Assignee, or Assignees, are chosen and appointed, the whole of the property vests in all absolutely, so as to give them the same rights and remedies as if vested in them individually. And where there are two or more, they stand seized or possessed of the property in joint tenancy with a right of survivorship in case of death, and represent the bankrupt in every thing respecting that property with the same rights the bankrupt himself had and even additional rights conferred by the statute, and generally they are bound by the same equities, see 2 V. & B. 309; 13 Ves. 188; 12 Ves. 349; 9 Ves. 100; 2 Vern. 286; 2 Atk. 562; 2 Show. 103; 1 Ves. Sen. 331. Sir M. O'Loghlen, M. R. (citing *Anderson* v. *Maltby*, 2 Ves, jun. 254.) observed that the Lord Chancellor had declared that an assignee had all the equity which the creditors had and might impeach transactions unimpeachable by the bankrupt himself, *Bust* v. *Bernard*, 4 Ir. Eq. R. 333.

See further Arch. B. L. p. 442; 1 Deac. by De G. 340; 1 Mont. & A. by K. & Miller. p. 312.

Their Duties.]—They ought to call meetings upon extraordinary occasions where the creditor's interest call for them, although they are not bound so to do except where they require their sanction, or under the statute, previous to compounding debts, or giving time or accepting security or commencing suits or submitting to arbitration, &c. for all which, and for notice thereof, how and where given, see 6 W. 4 c. 14; s. 102 Ir. *infra.*

They should make no delay in collecting debts and making sales, and should confer upon all matters and things with the official assignee. It has been shown (p. 75, *supra*,) that the new rules and orders, (1849) enjoin the same attention to their duties still as had been previously required of them; and from the fixed character of the official assignee, his being always in court, and keeping books and evidence of all transactions respecting the estate, together with his being an officer, entirely under the control of the court, the labours of the Creditor's Assignee must be considerably diminished, especially if a cordial co-operation, one with the other, be determined upon and observed.

They possess, however, a right entirely distinct from that of the Official Assignee, in having the sole control over the solicitor or attorney in the cause, both as to the appointment and removal; from any interference in which department the Official Assignee is strictly forbidden by s. 31 of the recent Act, and see p. 74, *supra.*

There is no difference in the law and practice between England and this country on the subject of Creditors' Assignees; the reader is referred, and for the reasons given *ante* p. 71, to Arch. B. L. pp. 436 to 480; 1 Dea. B. L. by De G. pp. 328 to 379; 1 Mont. & Ayr. B. L. pp. 312 to 425. Same editions as referred to in p. 70.

CHAPTER VIII.

DIFFERENCE BETWEEN ENGLISH AND IRISH PRACTICE.

The following notice of a few of the most prominent points of difference in the practical working of the Bankrupt Laws in England and Ireland, will be found useful in consulting or applying any of the reported cases.

The law in both countries can scarcely be said to differ. They may be said, in fact, to be almost assimilated since the passing of the Act of last Session; yet the machinery employed in determining many cases in England, would lead the reader, at first, to a different conclusion.

IN ENGLAND.

The jurisdiction of the Lord Chancellor in matters of Bankruptcy, was originally very extensive, and recognized by repeated Acts of the Legislature, as well as by a long series of judicial decisions: 2 Chr. B. L. 212. 226. The influence of his recommendation and advice to the Commissioners, and the indirect power which he possessed over them by his patronage, and his refusal to insert their names in other Commissions, insensibly conferred upon him an almost unlimited control over their conduct: *ibid.* The appeal from the decisions of the Commissioners was directly to the Lord Chancellor, who exercised, in that respect, a sort of jurisdiction which the same learned authority above quoted termed a *recommendatory*, as distinguished from the *mandatory* jurisdiction conferred by the early statutes, an influence which was naturally supposed, in many cases, to have operated in derogation of that of the Commissioners.

The Bankruptcy Statutes, as remarked by Lord Eldon, 14 Ves. 451, seemed to have been framed with the view to the authority with which the Chancellor was ordinarily entrusted; and where they were silent his practice was to *enforce* by virtue of his general jurisdiction. In fact, his Orders in Bankruptcy were considered analogous to Decrees in Chancery—*Flower* v. *Herbert*, 2 Ves. 326; Ex p. *Cowan*, 3 B. & A. 129. Nor was he held liable to an action upon a commitment, although irregular: *Dicas* v. *Lord Brougham*, 1 Mood. & R. 309. All this equally applied to the Lord Chancellor in Ireland, until 6 Wm. IV., c. 14, Ir.

COURT OF BANKRUPTCY.

A great change was effected in the entire machinery, respecting the decisions on cases in Bankruptcy in England, by the Act 1 & 2 Wm. IV., c. 56, entitled *An Act to establish a Court in Bankruptcy*, in pursuance of which the crown, instead of the Lord Chancellor as hitherto in the case of Commissioners, was empowered to appoint barristers of specified standing at the bar, one of whom should be the "Chief Judge of the Court of Bankruptcy," three to be other Judges of the same Court, and six to be called Commissioners of the Court. All these together constituted the court above-named, which was by the

Statute (sec. 1) declared to be a Court of Law and Equity; the judges and Commissioners thereof to have all the rights, incidents, and privileges of a Court of Record, as fully as were used, exercised, and enjoyed by any of the Courts of Law or Judges at Westminster.

COURT OF REVIEW.

Under the Statute last cited, (sec. 2) a further change was effected, whereby a great portion of the jurisdiction of the Lord Chancellor was transferred to an entirely new-constituted tribunal, called "the Court of Review," consisting of the above-four judges, viz. one Chief Judge and three others; afterwards, by 5 & 6 Wm. IV., c. 29, s. 21, reduced to three, viz. a Chief Judge and two others; afterwards, by 5 & 6 Vic., c. 122, s. 64, reduced to one, who, however, retained the title of "Chief Judge" of the court, and was to take rank and precedence next after the Judges of Westminster Hall, (sec. 65).

To this court, and, since 5 & 6 Vict., to the Chief Judge alone, lay appeals from the Commissioners, with a further appeal to the Lord Chancellor, on a "special case," certified by the judge, and "on matters of law and equity, or on the refusal or admission of evidence only," (1 & 2 Wm. IV., c. 56, s. 3,) and it was, by the same section, declared that all such appeals should be "heard by the Lord Chancellor *only*, and not by any other judge of the High Court of Chancery." But this limitation did not preclude from further appeal, for, under sec. 37, the Lord Chancellor, if he should deem the matter before him "to be of sufficient difficulty or importance," or in case both parties before the Court of Review should be desirous of it, the Chancellor, or the Court of Review, might send the matter to the House of Lords, setting forth a special case, approved and certified in the usual manner.

This court was at length abolished by 10 & 11 Vic., c. 102, Eng., and its powers, authorities, &c., transferred to, and vested in, such one of the Vice Chancellors, as, from time to time, the Lord Chancellor should appoint, (sec. 2).

SUBDIVISION COURTS.

Besides the above, there are two other Courts occasionally formed in London, called Subdivision Courts, (1 & 2 Wm. IV., c. 56, s. 5,) each presided over by three of the above Commissioners, to which are referred matters such as the examination of the Bankrupt or other person, and also the proof of debts; for although one or more of the Commissioners in the Court of Bankruptcy were empowered (under s. 7 of the last named act), to execute all the powers, duties, and authorities as distinctly as hitherto they had been entitled, by separate commissions, under the great seal, yet they were restrained, by a subsequent proviso, from *committing* any Bankrupt or other person examined before them, except *to the custody* of a messenger or other officer of the court. The person was then to be brought up, within three days, before the Subdivision Court, or the Court of Review, one of which was obliged to assemble forthwith, if for no other purpose, and then and there resume the examination. The court so assembled was then empowered to impose a fine, or to commit. (s. 7, of same.)

DISTRICT COURTS.

All England is divided into districts for Bankruptcy purposes—the London district and seven Country Districts. The London district with its several courts has been described already. Of the Country Districts, each has a court called a District Court, which are held at the following towns:—Manchester, Leeds, Liverpool, Birmingham, Bristol, Exeter, and Newcastle upon Tyne, in each of which two Commissioners preside, excepting the two last, which have but one Commissioner each. By 7 & 8 Vic., c. 96, s. 44, the Lord Chancellor is empowered to alter the place of sitting, in which case the Commissioners and their Registrars are entitled to travelling and other expenses. The boundaries of those districts were considered matters of sufficient importance to be the subject of an order in council, and accordingly, on 2 Nov., 1842, they were defined and set out, and the *practice* of the District Courts was then directed by the General Orders in Bankruptcy to follow that of the Court of Bankruptcy in London. See Rule 6 of Gen. Orders, 12 Nov., 1842, Eng.

SUMMARY.

This subject has insensibly extended itself. It presents a very complicated system of practice compared with that which prevails in Ireland, the simplicity of which, however, might be attributed, perhaps, to causes which are not in operation in England. The number of decisions on Appeals, appearing upon the books of practice in England, strongly contrasts with the paucity of cases in Ireland. This may be accounted for in two ways. First—The greater quantity of the Business itself in the Bankrupt Courts. And secondly—By the usage of our Courts of Law and Equity, whose practice it is to follow such decisions as are reported in the English books, unless where they distinctly appear erroneous.

The Bankrupt Court in Ireland being in this manner furnished with a great body of decisions, pronounced by competent authorities in England, has seldom to contend with appellate difficulties. Thus the simplicity of the structure in Ireland, may, in many respects be said to be mainly owing to the *results* of those very complications above exhibited.

The jurisdiction of the old Commissioners, holding under the Great Seal, was involved in difficulty so late as Lord Eldon's time, who observed that "there were many acts of the Commissioners that the Great Seal could not control; the Commissioners having the authority to do them given by the Legislature:" Ex. p. *King*, 11 Ves. 423. At another period the Chancellor said that "he had no more right to reverse an order of the Commissioners than the Court of King's Bench; *Clarke v. Capron*, 2 Ves. jun. 666. Since that period, however, the question of jurisdiction has been much better defined, especially since the passing of the Statutes, erecting the several Courts and creating Judges, &c., vesting the appointment of all in the crown, and finally pointing out, with something of precision, the line of duty they should pursue.

Thus it is, there is but little to be done by the appellate jurisdiction in Ireland, which will appear on comparing the cases in the books of both countries.

The following is a list of the several jurisdictions referred to in the books of practice in England:—

The Commissioner, alone, in London.
The District Court in the country.
The Bankruptcy Court.
The Subdivision Courts.
The Court of Review, now the Vice-Chancellor.
The Chancellor.
The House of Lords.

These are the several authorities existing in England since the year 1832, many of which, at some periods or other, and on some particular subjects, hold jurisdictions appellate in relation to others and upon special occasions their decisions are deemed final; whilst upon other occasions they are but subordinate, being subject to further revision.

IN IRELAND.

All Ireland is but one district, and there are no country Commissioners, nor country Commissions, and no distinction exists between town and country cases, with, perhaps, one solitary exception, laid down for practice in Rule 2 of the General Orders (27 March, 1843,) in which a period of *eight days* is limited for proceeding on to an adjudication where the alleged Bankrupt resides within twenty miles of the Castle of Dublin, and *fourteen* where he resides outside that limit: see p. 61, and Rule 2, *infra.*

There are two Commissioners with equal powers and authorities, (see Introd. p. 6, *supra*,) and the appeal is direct to the Lord Chancellor alone.

THE LAW OF BANKRUPTCY IN IRELAND.

◆

ANNO DUODECIMO & DECIMO TERTIO

VICTORIÆ REGINÆ.

12 & 13 Vict., Cap. 107.

An Act for the amendment of the Law of Bankruptcy in Ireland.

[1st August, 1849.]

Preamble and commencement of Act.

WHEREAS it is expedient to amend the Law of Bankruptcy: And whereas by an act passed in the reign of his late majesty, intituled *An act to* [*amend the laws relating to Bankrupts in* Ireland,][1] various alterations were made in the administration of the Law of Bankruptcy, which have, by experience, been found beneficial; and it is advisable to extend the provisions and regulations contained in the said act: Be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the provisions of this act, unless

Corresponding Enactments.

(*The verbal differences are within brackets.*)

5 & 6 Vic., c. 122, s. 1, Eng. comg. 11 Nov., 1842; *Rep. by* 12 & 13 Vic., c. 106, E., (§ 1, and Sch. A.) from 11 Oct., 1849.

[1] [Establish a Court in Bankruptcy.]

SECTION I.

The Law of Bankruptcy.—Bankruptcy, in its legal sense, was unknown to the common law. The earliest statute upon the subject in Ireland was 11 & 12 Geo. III., cap. 8; in England, 34 & 35 Henry VIII., cap. 4. The Lombards' act, 25 Edw. III., did not extend to the king's subjects.—See Introduction, page 2.

Of his late majesty.—These words refer to 6 Wm. IV., cap. 14, Ir.; and the like words in the corresponding section refer to 1 & 2 Wm. IV., cap. 56, Eng.—See following note.

Various alterations.—The alterations effected by 6 Wm. IV., cap. 14, Ir., which was a repealing and amending, as well as a consolidating act, were numerous and important. A short summary of the changes will be found in the Introduction, page 5, which see.

To extend the provisions, &c., in said Act.—As these statutes must be read in conjunction, reference will be had from time to time in the notes to the clauses in *pari materiâ.*

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(*The verbal differences are within brackets.*) [2] [From and after the eleventh day of *November* next]—11 *Nov.*, 1842.	where otherwise herein specially provided, shall commence and take effect [on the first day of *November*, one thousand eight hundred and forty-nine.] [2]
	Laws at variance, &c., repealed.
5 & 6 Vic., c. 122, s. 2, Eng., comg. 11 Nov., 1842; *Rep. by* 12 & 13 Vic., c. 106, re-enacted in substance § 1 of same. *Same verbatim.*	II. And be it enacted, That all laws, statutes, and usages shall be, and the same are hereby, repealed, in so far as they may be inconsistent or at variance with the provisions of this act: provided always, that the same shall continue in force in all other respects whatsoever.
	Petitioning Creditor's Bond dispensed with.
§ 3 of Same Act. [1] [Fiat in Bankruptcy, it shall be lawful for.] [2] [If he shall think fit to.]	III. And be it enacted, That in every case of a petition for the issue of a [Commission of Bankrupt] [1] the Lord Chancellor [of *Ireland* shall] [2] dispense with the bond now

SECTION II.

All laws, &c., at variance.]—The Statutes on the subject of Bankruptcy in Ireland are very few. The leading Statute is 6 Wm. IV., cap. 14, which being a consolidating and repealing Act, rendered inoperative almost all anterior to it. For a list of those now in force and the Acts themselves, see *post.*

SECTION III.

A Commission of Bankrupt.]—We retain the word Commission, although the English Acts instead thereof had used "fiat," since 1 & 2 Wm. IV., cap. 56, sec. 12, Eng., which enacted that where the Lord Chancellor had power to "issue a commission," a *fiat* "in lieu of such commission," might thenceforth be issued; and by sec. 16, all laws and rules were extended thereto, as if to commissions. In a note at foot, 1 De Gex. B. L., 735, is the following,—"but why a *fiat* should have been substituted for a commission, by 1 & 2 Wm. IV., cap. 56., it is not very easy to explain." Fiat is now abolished in England, and "Petition" substituted, by sec. 89 of the Eng. Consol. Act, 1849.

Dispense with the bond.]—The Bond being now obsolete both here and in England, it would be superfluous to observe at any length upon it. It was considered an important security against maliciously sueing out a commission; but, although, under the corresponding clause, the Lord Chancellor had still power to require it at his discretion—we are told the practice had been discontinued—1 De Gex. B. L., 142—the party aggrieved has still, as he always had, his common law remedy, by an action on the case, a proceeding often more satisfactory than an action on the Bond; the jury in an action on the case not being restricted in their damages by the penalty of the Bond, but by the amount of injury sustained. *Brown* v. *Chapman*, 3 Burr., 1418; *Chapman* v. *Pickersgill*, 2 Wils., 145; *Bonham's case*, 8 Rep., 121. *Wydom's* case, 14 Ves., 90. Ex p. *Fletcher*, 1 Rose, 454. In such action the solicitor should not be joined as a defendant, unless he exceeded the bounds of his professional duty. *Smith* v. *Gainsford*, 1 Rose, 148. *n.* It had been held, that an infant could not be a

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required to be given to him by the petitioning creditor, conditioned for proving his debt, and for proving the party to have committed an act of Bankruptcy at the time of issuing such [commission,][3] and for proceeding upon such [commission,][3] and [ ][4] it shall be lawful to issue the [commission][3] without any such Bond having been given.

Persons about to quit Ireland may be arrested.

IV. And be it enacted, That whenever any [Commission of Bankrupt][1] shall have issued against any person, and it shall be proved to the satisfaction of the [commissioners][2] authorised to act in the prosecution of such [commission, or one of them,][3] that there is probable cause for believing that such person is about to quit [*Ireland*,][4] or to remove or

Corresponding Enactments.

(The verbal differences are within brackets.)

[3] [Fiat.]

[4] [In such case.]

This section is not re-enacted. All enactments respecting the Bond in England being now repealed, it ceases to exist.

5 & 6 Vic., c. 122, s. 3, Eng., comg. 11 Nov., 1842; *Rep. by* 12 & 13 Vic., c. 106, E., from 11 Oct., 1849, re-enacted in substance, 99 of same,

[1] [Fiat in Bankruptcy.]

[2] [Court.]

[3] [Fiat.]

[4] [England.]

Petitioning Creditor, *because he could not enter into the Bond;* nor could he have been one of several Petitioning Creditors, although the others executed: Ex p. *Barrow*, 8 Ves. 554; Ex p. *Moreton*, Buck. 42; Ex p. *Potts*, M. D. & D. 331; see p. 54, *supra*.

An act of Bankruptcy.]—What are (see page 29.) Must not be more than twelve months prior to issuing commission, sec. 7, *infra*. May be prior or subsequent to Petitioning Creditor's debt, sec. 8, *infra*. Need not always be with intent to defeat or delay.—page 42.

SECTION IV.

The whole of this section is new. Hitherto under no circumstances could the Bankrupt be arrested, or his goods be seized, except *after adjudication*, by the messenger, which often caused loss.—See Ex p. *Knowles*, 1 Dea. 213, in Re *Blake*, Mon., & C. 262. The corresponding section above was equally new in England. There are so many of the proceedings now which warn a trader of his creditor's intentions, that a summary jurisdiction was wanted. In England there was, however, a stronger motive for this provision, as by sec. 28 of 5 & 6 Vic., c. 122, Eng., the Bankrupt had five days to show cause against adjudication, before the usual seizure of warrant could issue.

Whenever any commission.]—It may be doubtful whether, *and previous* to adjudication be here understood. It being a transportable felony *after* adjudication, (sec. 44, *infra*,) to remove or conceal with intent to defraud, &c., such a provision would be unnecessary, save *prior* thereto.

Proved to the satisfaction.]—This proof ought to be *on Oath*, reasoning by analogy from other portions of the Statute. For instance, where in sec. 42, *infra*, the words are "it shall be *made to appear* to the satisfaction of the commissioner," &c., the form of warrant given in schedule H runs thus, "Whereas, by evidence *duly taken on oath*, it hath been made to appear to the satisfaction of me," &c.

Or to remove or conceal, &c.]—If this section be controlled by sec. 44, *infra*, the proof should specifically set forth a certain amount, so as to cover the excepted value, (under ten

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

² [Court.]

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conceal any of his goods or chattels with intent to defraud his creditors, unless he be forthwith apprehended, it shall be lawful for such [commissioners or commissioner]² to issue a warrant directed to any person or persons such [commissioners or commissioner]² shall think fit, whereby such person or persons shall have authority to arrest, *and commit to such*

pounds, to sustain the charge of concealing, &c., "any part of such estate to the value of ten pounds, or upwards," which is made felony under sec. 44, *infra*, and also under sec. 130, of 6 Wm. IV., cap. 14, Ir. It might be urged that the summary jurisdiction given under this section to the commissioner, before adjudication is in anticipation of the greater offence, which the same acts would amount to, after the adjudication had been made.

With intent.]—The intention here constitutes the essence of the offence. It would be necessary, therefore, to prove *an intention to defraud.*

Issue a warrant.]—There is no Form in the schedule for this warrant *before* adjudication, nor in Archbold, nor De Gex, although there is such for seizing the goods, &c. under the corresponding section.—See 2 Arch. 17. All warrants must be under hand and seal. (s. 71, *infra.*)

Directed to any person, &c., such commissioner, &c., shall think fit.]—This word person it is presumed means Messenger. Considering the great importance of his duties as a permanent officer, and the numerous references thereto, it is strange how seldom the word messenger appears in the body of our statute book, although it frequently appears in the marginal notes to the different sections of the Statutes. It appears for the first time in 5 Geo. II., cap. 30., sec. 4, Eng., transferred *verbatim* into 11 & 12 Geo. III., cap. 8, sec. 27, Ir. The forms of the warrants given in this Act, under schedules E, F, G, and H, are directed, at foot, "to the messenger and assistants," and in one instance "to the assistant messenger." A several warrant for stolen property, could only be granted to the *messenger*, and where delivered to a constable, it was held illegal; and he could not protect himself by delivering a copy to the plaintiff. *Sly* v. *Stevenson*, 1 Car. & P., 404. And yet where the messenger employed an agent to take possession, and the agent absconded, it was held that the messenger was not liable for money had and received, there being no negligence on his part. *Raw* v. *Cutten*, 9 Bing. 96. 2 Moore & S. 123. See note to sec. 50, *infra.*

To arrest and commit to such prison.]—This power of committal is new, and is not to be found in the corresponding clause, which only gives a power to *arrest* the person, and *seize* his books, &c., and "*him or them safely keep until the expiration of the time allowed for opening such fiat*, or *until such person shall be adjudged bankrupt*," *&c.*, and be "*thereon dealt with under such fiat.*" The phrase here noted carries with it internal evidence of its being foreign to the section. "Him or them safely keep" is the original expression in the corresponding clause, which accords with the power given to the messenger to *arrest* the person and *seize* his books, &c. In England the commissioner has no power to commit to prison; on the contrary, he is positively restricted by Statute, 1 & 2 Wm. IV. He only commits to the custody and safe keeping of the messenger, who may detain the person for three days in order to his examination before the Court of Review, or Subdivision Court, previous to a committal or enlargement by such court, see p. 78, *supra*, under head Subdivision Courts; and see 1 & 2 Wm. IV., c. 56, s. 7, Eng., and Arch. B. L. pp. 13. 327. 338.

Such prison as the commissioner shall think fit.]—The 6 Geo. IV., c. 16, s. 116, Eng., adopted the provisions of 5 Geo. II., c. 30, s. 36, Eng. Rep., as to the commitment of the Bankrupt for non-attendance, &c., but instead of the words "to the county gaol," as in 5 Geo. II., it substituted the words, "to such prison as they shall think fit;" and the 6 Wm. IV., c. 14, s. 134, Ir., being a transcript of the above section of 6 Geo. IV., adopted the same phrase,

12 & 13 VICT., CAP. 107.	CORRESPONDING ENACTMENTS.
prison as the said commissioners or commissioner shall think fit,[5] the person named in	*(The verbal differences are within brackets.)*
such [commission,][3] by his body, and *shall*	[3] [Fiat.]
also *have authority*[5] to seize his books, papers, monies, securities for monies, goods and chattels,	[5] *The words in italics are not in the corresponding section.*
wheresoever [ ][6] they may be found,	[6] [He or.]
and [ ][7] them safely keep until the expi-	[7] [Him or.]

"to such prison as he shall think fit" (there being under that act but one commissioner—the phrase is in the singular number). In 11 & 12 Geo. III., c. 8, s. 30, Ir., the phrase in reference to a non-surrendering Bankrupt was, "to commit to the common gaol of the county," but that could only be under a judge's or magistrate's warrant, obtained upon the application of the messenger, supported by a certificate under the hands and seals of the commissioners, or the major part of them. But whenever the commissioners themselves committed, under 11 & 12 Geo. III., persons for disobedience of summons, &c., then they committed them "to such prison," as to them should "be thought meet" (s. 32), and "to such prison" as "they shall think fit," (s. 34.) In the case of the Bankrupt's committal, it was to the county gaol. (s. 56.) There was always a distinction observed in these committals. The words "such prison as the commissioners or commissioner shall think fit," having been adopted by whatever statutes remain in operation, in lieu of the word "gaol," a question now arises how far the commissioners are empowered to commit to the custody of *any* keeper of a prison, within their *jurisdiction*, which is co-extensive with the kingdom; or, supposing the delinquent trader to be in the neighbourhood of Dublin, how far his choice of a prison be controlled by the Marshalsea Act, 5 & 6 Vic., c. 95, s. 1, which enacts, "That after the passing of this act the prison of the Four Courts' Marshalsea shall be the only prison for all *Debtors*, *Bankrupts*, or other persons, *who*, *before* the passing of this act, *might lawfully* have been imprisoned in *any of the said prisons* of the Four Courts' Marshalsea, the City Marshalsea, or the Sheriff's Prison, and also for all persons, who, before the passing of this act might lawfully have been *imprisoned for debt* in Newgate; and that after the passing of the act, no person shall be committed by any of the said courts, or by other legal process, to the said City Marshalsea, or the Sheriff's Prison, or for debt to Newgate." Thus the statute wholly excludes *prisoners of any kind*, from *two* out of the three prisons mentioned, leaving the prison of Newgate alone, as a subject for consideration, and Newgate is excluded so far as regards *prisoners for debt*. By 12 & 13 Vic. c. 95, s. 1, Newgate will be abolished as a prison, as soon as an order of the Lord Lieutenant and Council so declares.

It may be a question, therefore, after such abolition, to what place absconding traders, or felonious Bankrupts, or persons under contempt, may be committed by the warrant of the commissioner. Under the foregoing provision of 5 & 6 Vic., the persons *committable* to the Four Courts' Marshalsea, in addition to those hitherto liable to be committed thereto, were those who, before the passing of that act (5 & 6 Vic., c. 95), *might lawfully* have been imprisoned either in the City Marshalsea, or the Sheriff's Prison, or the Debtor's side of Newgate. If persons under mere contempt were not liable to be committed to any one of the last named or to the Four Courts' Marshalsea, prior to the passing of 5 & 6 Vic. c. 95, it follows, then, that they cannot be committed there *now*, and *a fortiori* absconding Debtors, except under the phrase above, "such prison as the said, &c., shall think fit." Perhaps, the Commissioner is bound to deal with a person under these circumstances rather with severity than otherwise, as one, who without having actually committed an indictable offence, appears under the same degree of suspicion of being influenced by a *felonious intent*, as a person committed by a magistrate for a non-bailable offence. Both are under an *ex parte* charge on the oath of credible persons. The case of a judge's fiat does not involve the contemplation of an offence, but of Insolvency alone; therefore, it is not analogous.

The person named in such commission by his body.]—This power of committal is not limited as to time by any restraining words. The commissioner is empowered to commit, and it would appear for an unlimited period, but an implied restriction seems discoverable in sec. 5, when treating of the duties of "gaoler;" see following note, and also sec. 5, and notes.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

[3] [Fiat.]

[8] [Thereon.]

6 W. IV., c. 14, s. 51, Ir., comg. 1st July, 1836, and 6 Geo. IV., c. 16, s. 38, Eng., both identical; the latter Rep. by 12 & 13 Vic., c. 106, Eng., from 11 Oct. 1849, re-enacted in substance s. 274 of same, see note, *infra.*

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ration of the time allowed for opening such [commission,][3] or until such person shall be adjudged Bankrupt under such [commission,][3] and be [thereupon][8] dealt with under such [commission][3] according to the laws relating to Bankrupts.

Penalty on Gaoler.

V. And be it enacted, That if any gaoler, to whose custody any bankrupt, or other person, shall be committed as aforesaid, shall suffer such Bankrupt, or other person, to escape, *or go free, until released by the discharge of*

And them safely keep.]—The word *them* relates solely to the books, papers, monies, &c., seized by the messenger. The English section has "him, or them," because the entire clause was uninterrupted and homogeneous. The messenger was to *arrest* the body and *seize* the books, &c.; and "him, or them" safely keep until, &c. In the present section, the introduced words, "and commit to such prison as the commissioners or commissioner shall think fit," after the word "arrest," has had the effect of separating the original provision into two members, the *first* member perfect in sense, but incomplete in law; the *second* imperfect in sense. In order to complete the sense of the second member, the introductory words, "shall also have authority," are inserted. The effect now is, that the limitation of custody contained in the latter member refers only to books, papers, &c.; whilst the custody, or rather imprisonment (the words being "arrest *and* commit") of the alleged Bankrupt, remains undetermined, (see s. 5.)

Until the expiration, &c. or until such person shall be adjudged bankrupt.]—The first portion of this clause, in its original state, had in view sec. 23 of 5 & 6 Vic. cap. 122, which gave the bankrupt in England five days between the adjudication and the time of putting in execution the warrant of seizure, to shew cause against the validity of the adjudication. We have not this provision in Ireland. As to the latter portion of this section (see s. 44, *infra*), where removal of the goods by "any *such* Bankrupt," (which must mean, "any person *adjudged* Bankrupt after the commencement of this act *ibid.*) to the value of "ten pounds, or upwards, with intent to defraud," &c., is felony, and, of course, subjects the wrong-doer as such to no authority, other than a court of criminal jurisdiction.

SECTION V.

That if any gaoler, &c.]—This provision has come down to us from the earliest statutes, and will be found in 11 & 12 Geo. III., c. 8, s. 36, Ir. Rep., which was taken from 5 Geo. II., c. 20, Eng. Rep., and is yet to be found in 6 Geo. IV., c. 16, s. 38, Eng. Rep., from 11th October, 1849, by 12 & 13 Vic., c. 106, Eng., but re-enacted in s. 274 of same, with some alterations, not, however, identical with those above in s. 5. It (s. 274) has "keeper of any prison, or gaoler," and also, "shall refuse *to receive* such Bankrupt, or other person," or "suffer him to escape," &c.; but it has not, nor has any preceding enactment, the words, "until such person is adjudged and declared Bankrupt." The 51st sec. of 6 Wm. IV., c. 14, is the provision in operation as to the liability of gaolers, generally, under the Bankrupt Laws. So that every person committed under this, or any other act relating to Bankrupts in Ireland (with the exception of s. 4, *supra*), renders him liable to the duties and contingencies therein set forth.

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the said Commissioners, or one of them, or until such person is adjudged and declared bankrupt, [1] every such gaoler shall forfeit five hundred pounds, *to be recovered as hereinafter provided.*[1]

Bankrupt may shew cause against being detained.

VI. Provided always, and be it enacted, That it shall be lawful for any person arrested upon any such warrant, or for any person whose books, papers, monies, securities for monies, goods or chattels, have been seized under any such warrant, to apply, at any time after such arrest or seizure to such [Commissioners or Commissioner,][1] for [a summons for][2]

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding sections.*

5 & 6 Vic., c. 122, s. 4, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic., c. 106, Eng., re-enacted in substance, s. 99 and 249, of same, from 11 Oct. 1849.

[1] [Court.]

[2] [An Order or Rule on.]

As aforesaid.]—These words limit the operation of this section to persons committed under s. 4.

Until released by, &c., or, until such person is adjudged and declared Bankrupt.]—This latter member of the section can only have reference to those committed by warrant under s. 4, and, concerning whom, the process to effect an adjudication of Bankruptcy has arrived at a certain stage, but not at the adjudication itself. A commission of Bankruptcy must have issued, in order to invest the commissioner with the power of committing under the 4th section. And it is submitted, that the power thus conferred expires upon the person being "adjudged Bankrupt under such commission." There is no Power of Commitment, in any statute, unaccompanied by a determination of the imprisonment, either by the fulfilment of certain conditions on the part of the prisoner, or the occurrence of a stated event or contingency, or by the evolution of time.

There is no Form of discharge given under this act, nor any other Form under any of the statutes applicable to the present section. It may be a subject of doubt how far the gaoler would be justified in discharging such person from his custody, as soon as he be "adjudged and declared Bankrupt;" or, how far he may be liable to the penalty for an escape, or an action for false imprisonment; or, how far the person committed may be punishable for breaking gaol. As to a gaoler's right to retake, it was held that where a Bankrupt escaped out of the custody of the Marshal of the King's Bench, and surrendered to a commission subsequently issued, being then at large, that such surrender did not operate against his right to retake and retain him; *Anderson* v. *Hampton*, 1 B. & A. 308; Ex p. *Johnston*, 14 Ves. 36, and see De Gex, p. 601. The statute, however, upon which the decision of *Anderson* v. *Hampton* was made, had not the above proviso, "until such person is adjudged and declared bankrupt."

Hereinafter provided.]—How forfeitures are recovered, see s. 74, *infra.*

SECTION VI.

A Summons.]—All summonses must be in writing, and under the hand of a commissioner (s. 71, *infra*) and the commissioners are empowered with the sanction and confirmation of the Lord Chancellor to frame rules for the regulation of the proceedings, where no provision in the act (s. 70, *infra.*)

the Petitioning Creditor named in such [commission][3] to shew cause why the person arrested should not be discharged out of custody, or why his books, papers, monies, securities for monies, goods and chattels, should not be delivered to him; and that it shall be lawful for such [Commissioners or Commissioner, at the time named in such summons, or at any adjournment thereof, to make such order as to them or him shall seem meet, and to direct the costs of the application for the warrant, and of the warrant, and the arrest and detention thereunder, and of all proceedings consequent thereupon or arising therefrom, or any part thereof, or of a specific sum of money in lieu thereof, to be paid by either party, and by such order to direct when and to whom same shall be paid;][4] provided that any such order may be [rescinded or varied by the Lord Chancellor of *Ireland*,][5] on application made [to him][6] by either party dissatisfied with such order.

No person liable beyond 12 *months.*

VII. And be it enacted, That no person shall be liable to become bankrupt by reason of any act of Bankruptcy, committed more than twelve months prior to the issuing of any [Commission of Bankrupt][1] against him.

(The verbal differences are within brackets.)

[3] [Fiat.]

[4] [Court to make absolute, or discharge such Order or Rule, and to direct the costs of the application to be paid to either party.]

[5] [Discharged or varied by the Court of Review.]

[6] [Thereto.]

5 & 6 Vic., c. 122, s. 7, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic., c. 106, Eng., re-enacted in substance, s. 89, of same.

(1) [Fiat in Bankruptcy]

To direct the costs, &c.]—The clause substituted here, in lieu of that found in the corresponding section, in margin, will invest the court with a discretionary power of ordering a fixed sum for Costs, which, if used with discretion, will have a beneficial effect in obviating the hardship and delay of furnishing and taxing. This power resembles that already possessed by the Lord Chancellor and the Master of the Rolls.

May be rescinded or varied.]—The Petition of Appeal must, however, be filed within twenty-one days (see s. 114, *infra.*)

SECTION VII.

More than twelve months prior.]—The Relation back had been a constant source of mischief as well to the Bankrupt as Creditors. Even after its partial relaxation enough remained to induce the judges to designate it an *odious law; Clarke* v. *Ryall*, 1 Bl. R. 642, and see per

12 & 13 Vict., Cap. 107.

Act of Bankruptcy within one year.

VIII. And be it enacted, [That an Act of Bankruptcy committed by a trader at any time within one year of the issuing of a Commission of Bankruptcy against such trader, whether prior or subsequent to the debt of the petitioning creditor, shall be deemed sufficient to support the adjudication of Bankruptcy under such commission, whether issued before or after the passing of this Act.][1]

Amount of Petitioning Creditor's Debt.

IX. And be it enacted, That the amount of the debt or debts of any Creditor or Creditors petitioning for a [Commission of Bankrupt,][1] shall hereafter be as follows; that is to say,

Corresponding Enactments.

(The verbal differences are within brackets.)

6 Geo. IV., c. 16, s. 19, Eng., comg. 1 Sept. 1825; *Rep. by* 12 & 13 Vic., c. 106, Eng., re-enacted in substance, s. 89, of same.

[1] [That no commission shall be deemed invalid by reason of any act or acts of Bankruptcy prior to the debt or debts of the Petitioning Creditor, or Creditors or any of them, provided there be a sufficient act of Bankruptcy subsequent to such debt or debts.]

6 W. IV., c. 16, s. 36, Ir., is verbatim the same,

5 & 6 Vic. c. 122 § 9, Eng., comg. 11th Nov. 1842, *Rep.* by 12 & 13 Vic. 106, re-enacted by § 91 of same, from 11th Oct. 1849.

[1] [Fiat in Bankruptcy.]

Mansfield, Chief Justice, 4 Taunt. 198. By 6 Wm. IV., c. 14, s. 96, Ir., all payments really and *boná fide*, made by, or to the Bankrupt (not being a fraudulent preference) before the date and issuing of the commission, shall be deemed valid, notwithstanding any prior Act of Bankruptcy, and such Creditor shall not be liable to refund, provided the person dealing with the Bankrupt had not notice of any Act of Bankruptcy committed. A payment made even on the verge of Bankruptcy (if *boná fide* at the time), to a Creditor aware of insolvency, is protected by 6 W. IV., c. 14, s. 95, provided no commission issue till more than two months after payment; the doctrine of fraudulent preference not applying to cases extending beyond two months previous to commission. *Tucker* v. *Barrow*, 1 M. & M. 137; 3 Car. & P. 85; 7 B. & C. 623: *Turquand* v. *Vanderplank*, 10 M. & W. 180; see De Gex, 724, *et seq.*; Arch. 212, *et seq.*

SECTION VIII.

Whether prior or subsequent.]—Previous to 46 Geo. III., c. 135, sec. 5, (U. K.) the Commission was avoided, if it appeared that an Act of Bankruptcy had been committed by the Bankrupt prior to the contracting of the debt with the petitioning creditor, even though the creditor was unconscious of it. The above section 5 (of Geo. III.) for remedy enacted, that no commission should be avoided or defeated in such case, if, at the *contracting* of the debt, the petitioning creditor had no notice thereof; and the 6 Geo. IV., c. 16, sec. 19 (Eng.), in re-enacting that clause, omitted all reference to notice, and merely provided that if there was a sufficient Act of Bankruptcy subsequent to such debt or debts, the commission should so far "not be deemed invalid," and this latter 19th section became verbatim the 36 sec. of 6 Wm. IV., c. 14 (Ir.) The Eng. Act, 1849, re-enacts in spirit and substance that clause in s. 88, thus, "That no adjudication of Bankruptcy shall be deemed invalid by reason of any Act of Bankruptcy prior to the debt of the petitioning creditor, provided there be a sufficient Act of Bankruptcy subsequent to such debt." The above section of the present act goes one step further than any of them, by rendering the adjudication valid without any reference to the time of contracting the debt, provided the Act of Bankruptcy was committed within one year preceding the commission. See also sec. 7, *supra.*

SECTION IX.

The first limitation to the amount of a petitioning creditor's debt did not occur until the 3 Anne, cap. 22 (Eng.), an act which, however, soon expired. It afterwards reappeared in 5 Geo. II., c. 30, sec. 23, (Eng.,) which, for "preventing the taking out of commissions of bank-

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(*The verbal differences are within brackets.*)

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the single debt of such Creditor, or of two or more persons being partners, petitioning for the same, shall amount to fifty pounds or upwards, and the debt of two creditors so petitioning shall amount to seventy pounds or upwards, and the debt of three or more creditors so petitioning shall amount to one hundred pounds or upwards; and that every person who has given credit to any trader upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such trader committed an Act of Bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have had any security in writing for such sum or not.

Traders liable.

5 & 6 Vic., c. 122, s. 10, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic., c. 106, Eng., re-enacted in substance, s. 65 of same, from 11 Oct. 1849.

Verbatim.

(*See Alphabetical List, p.* 17 *supra.*)

X. And be it enacted, That all livery stable keepers, coach proprietors, carriers, ship owners, auctioneers, apothecaries, market gardeners, cowkeepers, brickmakers, alum makers, Lime-burners, and millers shall be deemed traders, and subject and liable as traders to this and to the other statutes relating to Bankrupts.

Summoning a Trader Debtor.

Same Act, § 11, *re-enacted* in substance § 78 of same.

XI. And be it enacted, That if any Creditor of any trader within the meaning of this or

ruptcy maliciously" enacts, that no commission, &c., be awarded and issued, &c., unless the single debt of the creditor, &c., and then it goes on to limit the amount to £100, £150, £200, respectively, as we have had it up to the passing of the recent act; and as a statute introductive of a new qualification as to the subject matter, though penned in the affirmative, repeals a former statute concerning the same matter, ex p. *Carruthers*, 9 East 44; so the present affirmative clause repeals the £100, £150, £200 qualifications in 6 Wm. IV., c. 14, s. 32 (Ir.).

SECTION XI.

This is the first of a series of sections, ending with sec. 20, forming a complete subdivision of this act, introducing a new set of Involuntary Acts of Bankruptcy: namely, those growing out of proceedings in the Bankrupt Court, preceded by an affidavit of a creditor, (no matter how small the amount of the debt,) filed in the Secretaries office, together with notice of demand according to forms set out in the schedule to the act, followed by a summons granted thereupon by the Court. This process is easy and short, and gives the trader the alternative

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any other statute relating to Bankrupts now or hereafter to be in force shall file an affidavit [in the office of the Lord Chancellor's Secretary of Bankrupts in *Ireland*,][1] in the form *or to the effect*[2] specified in the schedule hereunto annexed (A. No. 1), of the truth of his debt, and of the Debtor as he verily believes being such trader as aforesaid, and of the delivery to such trader personally of an account in writing of the particulars of his demand, with a notice thereunder requiring immediate payment thereof, in the form *or to the effect*[2] specified in the said schedule (A. No. 2), it shall be lawful [for the Commissioners of Bankrupt in *Ireland*, or one of them,][3] to issue a Summons in writing in the form *or to the effect*[2] specified in the said schedule (A. No. 3), calling upon such trader to appear [before them, or one of them,][4] and stating in such Summons the purpose for which such trader is

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(The verbal differences are within brackets.)

[1] [in the court authorized as hereinafter provided to act in the prosecution of fiats in Bankruptcy, in the district (to be described as hereinafter mentioned) in which such debtor shall reside, or in the Court of Bankruptcy, if such debtor shall not reside in any such district.]

[2] *The words in italics are not in the corresponding section.*

[3] [for the court in which such affidavit shall be filed, as the case may be.]

[4] [before such Court.]

of either in some way satisfying the debt, if due, or committing an Involuntary Act of Bankruptcy, which, however, shall not impend over him without the crisis of a commission, for a longer period than two months from the filing of the affidavit. See s. 13, *infra et seq.;* and see pp. 58 and 59 *supra*, under head *Alternative Process*, and also Involuntary Acts of Bankruptcy, p. 47, *supra*. In section 24 of this act will be found another mode of causing an Involuntary Act of Bankruptcy, without any summons, by making an affidavit of debt of a certain extent, (£100, &c., but see sec.) and serving the trader with a copy thereof, accompanied with a notice, and requiring immediate payment; after which, upon non-compliance within 21 days, an Act of Bankruptcy is committed. That mode had been in operation and much resorted to under 3 and 4 Vic., c. 105, s. 8 (Ir.), of which s. 24 of this Act is but a copy, substituting 21 for 41 days. The original of both sections was 1 & 2 Vic., c. 110, s. 8 (Eng.), which had 21 days. The English Consolidation Act, 1849, reduces it to 7 days. It will be observed, that in one case (s. 11) there is a summons, and of course the usual publicity attendant upon its operations, but the Creditor summoning is not obliged to qualify by a certain amount of debt; in the other case (s. 24) the proceeding may be private, if the Creditor can qualify by a debt of £100, or upwards. Both these, like all other Involuntary acts, are quite irrespective of an intention to defeat or delay Creditors, with which heretofore almost every act of Bankruptcy should have been accompanied.

Of any trader within the meaning, &c.]—For a list of all who are now liable to become Bankrupts, see under head "Traders, p. 17, *supra*, and who not liable, p. 27.

An affidavit.]—Before whom affidavits sworn, see sec. 69, *infra*. Punishment for false, sec. 73, *infra*.

And of the delivery to such trader personally of an account in writing of the particulars of his demand.]—It is evident by comparing the foregoing text with Schedule A, Nos. 1 and 2, that the Creditor is not meant to swear to the delivery in person of his account to the Debtor: the affidavit in the schedule avers that an account in writing of the particulars of his demand, is

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(*The verbal differences are within brackets.*)

5 & 6 Vic., c. 122, § 12, Eng., comg. 11 Nov., 1842; *Rep. by* 12 & 13 Vic., c. 106, re-enacted in § 79 of same, from 11th Oct. 1849.

[1] [Court.]

[2] *The words in italics are not in the corresponding section.*

[3] [such Court.]

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called upon by such Summons to appear, as hereinafter provided.

Manner of proceeding on Summons.

XII. And be it enacted, That upon the appearance of any such trader, so summoned as aforesaid it shall be lawful for such [Commissioners, or one of them] [1] to require such trader to state whether or not he admits the demand of such Creditor so sworn to as aforesaid, or any and what part thereof, and if such trader, shall admit such demand, or any part thereof, to reduce such admission into writing, in the form *or to the effect* [2] specified in the schedule hereunto annexed (B. No. 1), and such admission so reduced into writing such trader is hereby required to sign, and the same is thereupon to be filed in [the said office of the Lord Chancellor's Secretary of Bankrupts],[3] and it shall also be lawful for [such Commissioners, or one of them],[3] to allow

annexed thereunto. Then another person swears that a true copy of that account was personally served on a certain day on the Debtor, (see further, p. 58, *supra.*)

A summons in writing.]—All summonses to be under the hand of a Commissioner, s. 71, *infra.* The statute does not specify the number of days that must elapse between service and appearance. In England, by General Rules and Orders, dated 12th November, 1842, Rule 29 prescribes four days at the least, and service between nine o'clock in the forenoon and nine o'clock in the evening: 2 De Gex, B. L. 250; 2 Arch. B. L. 440. Under s. 70 of this act, the Commissioners of Bankrupts, acting together, subject to sanction and confirmation of Lord Chancellor, are empowered to make General Rules and Orders, for regulating forms of proceedings, &c., not provided for therein.

Although there is a provision in this act to enable the Commissioner to grant Substitution of Service upon parties keeping out of the way (s. 72, *infra*), yet it does not appear to have contemplated the case of a Summons under this section. See this explained, p. 59, *supra.*

SECTION XII.

See s. 11, above. There are several particulars in this, and the foregoing and subsequent sections, which have been made the subject of Rules and Orders in England, under 5 & 6 Vic., c. 122, a reference to which will show that great precision is necessary in following up those preliminary proceedings; and decisions are found formed upon their neglect or observance. For instance — Form of demand and notice, under s. 11 of 5 & 6 Vic., c. 122, where debt due to a partnership, how framed (rule 20); how directed (rule 21); particulars of demand, where credit given to Debtor, difference or balance only to appear in account (rule 22); affidavit must be filed within a month after notice of demand (rule 23), and so on. This section and the others, *in pari materiâ*, therefore, will require the assistance of Rules and Orders.

such trader upon his said appearance to make a deposition upon oath, in writing under his hand, to be filed in [the said office of the Lord Chancellor's Secretary of Bankrupts],[3] in the form specified in the said schedule (B. No. 2), that he verily believes he has a good defence to the said demand, or to some and what part thereof.

Trader not appearing to summons.

XIII. And be it enacted, That if any such trader so summoned as aforesaid shall not come before such [Commissioners, or one of them],[1] at the time appointed, (having no lawful impediment, made known to and proved to the satisfaction of the [said Commissioners, or one of them,][1] at the said time, and allowed), or if any such trader, upon his appearance to such summons as aforesaid, or at any enlargement or adjournment thereof, as the case may be, shall refuse to admit such demand, and shall not make a deposition in the form herein-before mentioned that he believes he has a good defence to such demand, then and in either of the said cases, if such trader shall not within fourteen days after personal service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure, or compound for such demand to the satisfaction of such Creditor, or enter into a bond, in

(The verbal differences are within brackets.)

[3] [such Court.]

Same Act, § 13, *re-enacted by* § 80 of same.

[1] [Court.]

SECTION XIII.

Such trader.]—See note to s. 11, and who are such traders, see p. 17, *supra.*

Secure.]—Where the Commissioner has approved of security he is *functus officio*, and cannot revoke his approval: Ex p. *Neale*, 2 M. D. & D. 620.

Enter into a bond.]—Where the bond had been duly executed before, but the approval of the Commissioner not obtained until after the expiration of the twenty-first day, held a good act of Bankruptcy: Ex p. *Rhodes*, 3 Dea. 125; Mon. & C. 319. If, after affidavit filed, the Creditor be a consenting party to the suspension of the payment, or the giving security beyond the twenty-one days: Ex p. *Gooddy*, 1 M. D. & D. 677; or, if the Creditor absent himself for a fortnight out of the twenty-one days to evade payment, and tender be made to his clerk: Ex. p.

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(*The verbal differences are within brackets.*)

[1] [Court.]

[2] [a fiat in Bankruptcy.]

5 & 6 Vic., c. 122, § 14, Eng., comg. 11 Nov., 1842; *Rep. by* 12 & 18 Vic., c. 106, E., from 11 Oct., 1849, re-enacted in substance, § 81 of same.

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such sum and with two sufficient sureties as such [Commissioners or one of them] [1] shall approve of, to pay such sum as shall be recovered in any action which shall have been brought or shall thereafter be brought for the recovering of the same, together with such costs as shall be given in such action, every such trader shall be deemed to have committed an act of Bankruptcy on the fifteenth day after service of such summons, provided [a Commission of Bankrupt] [2] shall issue against such trader within two months from the filing of such affidavit.

Trader admitting debt, but not paying, &c., in fourteen days.

XIV. And be it enacted, That if any such trader so summoned as aforesaid shall upon his said appearance sign an admission of such demand in the form aforesaid, and shall not within fourteen days next after the filing of such admission pay or tender and offer to pay to such Creditor the amount of such demand, or secure or compound for the same to the satisfaction of the Creditor, every such trader shall be deemed to have committed an act of Bankruptcy on the fifteenth day after the filing of such admission, provided [a Commis-

Gratton, 2 M. D. & D. 401; in these cases the Creditor cannot set up non-payment or no security within that time, as an act of Bankruptcy, to support a fiat (in Ireland, *a commission*).

The court, in which an action is brought upon the bond, may order it to be cancelled when payment is made, notwithstanding plaintiff's attorney having a lien on it for costs: *Wilson* v. *Firth*, 9 Dow. 573; but if satisfied by the render of the Debtor to jail, the court will not interfere: *Ridler* v. *Chappelow*, 1 Dow. N. S. 637. The above decisions, formed upon 1 & 2 Vic., c. 110, s. 8, Eng., will be found applicable to the present section.

Within two months from the filing.] The *day* of filing should be the *first* day of the two months. Ex p. *Budd* 5 Jur. 272. 1 M. D. & D. 436. See note to ss. 15 and 24, *infra*.

SECTION XIV.

The Act of Bankruptcy committed under this section is new, and is numbered 6 in the list of Involuntary Acts, set forth in page 50, *supra*.

12 & 13 Vict., Cap. 107.

sion of Bankrupt][1] shall issue against such trader within two months from the filing of such affidavit.

Trader admitting part, but no defence to residue.

XV. And be it enacted, That if any such trader so summoned as aforesaid shall upon his said appearance sign an admission for part only of such demand in the form aforesaid, and shall not make a deposition, in the form hereinbefore required, that he believes he has a good defence to the residue of such demand, then and in such case, if such trader as to the sum so admitted shall not within fourteen days next after the filing of such admission pay, or tender and offer to pay, to such Creditor the sum so admitted, or secure or compound for the same to the satisfaction of the Creditor, and as to the residue of such demand shall not within fourteen days after [ ][1] service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure, or compound for the same to the satisfaction of such Creditor, or enter into a bond in such sum and with two sufficient sureties as such [Commissioners or one of them][2] shall approve of, to pay such sum as shall be recovered in any

Corresponding Enactments.

(The verbal differences are within brackets.)

[1] [Fiat in Bankruptcy.]

Same Act, § 15, *re-enacted in* substance § 82 of same.

[1] [personal.]

[2] [Court.]

SECTION XV.

This gives another new Act of Bankruptcy, and is numbered 7 in the list of Involuntary Acts, for which see pp. 50 & 51, *supra.*

Or within such enlarged time, &c.]—The discretion of enlarging the time must evidently be much limited. The ruling in *Budd's* case, as to the first day of the two months (see note to s. 13), so far narrows the time. When from the two months is subtracted the day for taking out summons, the time lost in seeking the trader, in order to serve him, and then the fourteen days from service, given by the statute to pay or satisfy the Creditors, they will have a very short period to pause, before they determine on the advantages or disadvantages of issuing a commission.

After service of such summons.]—The corresponding English section has "personal service." It must be personal here, as the Commissioner is not empowered to allow substitution under s. 72 of this act. See p. 59, *supra*, where this is explained.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[3] [Fiat in Bankruptcy.]

5 & 6 Vic., c. 122, § 16, Eng. comg. 11 Nov., 1842; *Rep. by* 12 & 13 Vic., c. 106, E., re-enacted by § 83 of same, from 11 Oct., 1849.

[1] [Court.]

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action which shall have been brought or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in such action, every such trader shall be deemed to have committed an act of Bankruptcy on the fifteenth day after service of such summons, provided a [Commission of Bankrupt][3] shall issue against such trader within two months from the filing of such affidavit.

What deemed a Refusal.—Time enlarged.

XVI. Provided always, and be it enacted, that if any such trader so summoned as aforesaid shall upon his appearance before such [Commissioners or Commissioner][1] refuse to sign the admission in that behalf required as aforesaid, whatever may be the nature of his statement, or whether he makes any statement or not, it shall be deemed, for the purposes of this Act, that every such trader thereby refuses to admit such demand: provided always, that it shall be lawful for such [Commissioners, or one of them,][1] upon reasonable cause shown, to enlarge the time for calling upon such trader to state whether or not he admits such demand, or any part thereof, and for entering into such bond, or for either of such matters, for such time as such [Commissioners or Commissioner][1] shall think fit.

SECTION XVI.

This section is auxiliary to s. 13, *supra*, and more distinctly defines the Act, numbered 5 in the list of Involuntary Acts of Bankruptcy, for which see p. 50, *supra*. In the criminal law, if a defendant stand mute, he is, by statute 9 Geo. IV., c. 54, s. 8 Ir., deemed to have pleaded "not guilty." This statute adopts an opposite course. It seems in accordance with the principle of the Athenian Courts, noticed by Blackstone, by which witnesses summoned had the choice of three things: either to swear to the truth of the fact in question—to deny or to abjure it; or else pay a fine of a thousand drachmas. See 3. Com. 369.

12 & 13 Vict., Cap. 107.

Filing an Admission after Summons.

XVII. Provided always, and be it enacted, That an admission of any debt made after such summons as aforesaid, and signed by any such trader elsewhere than before such [Commissioners or Commissioner,][1] may be filed in such [Office of the Lord Chancellor's Secretary of Bankrupts,][1] and shall be of the same force and effect to all intents and purposes as an admission signed by such trader so summoned as aforesaid on his appearance before such [Commissioner or Commissioners,][1] provided there be present some attorney of one of her majesty's superior courts of law on behalf of such trader, especially named by him and attending at his request, to inform him of the effect of such admission before the same is signed by such trader, and provided also, that such attorney do subscribe his name thereto as a witness to the due execution thereof, and in such attestation declare himself to be attorney for the said trader, and state therein that he subscribes as such attorney, and that such admission shall be made in the form *or to the effect*[2] of Schedule (C.) hereunto annexed; *and a copy of such admission, purporting to be certified by the said Secretary or his clerk as a true copy, shall be received as evidence of such admission having been so filed.*[2]

Corresponding Enactments.

(The verbal differences are within brackets.)

Same Act, § 17, *re-enacted* § 84 of same.

[1] [Court.]

[2] *The words in italics are not in the corresponding section.*

SECTION XVII.

A copy of such admission, &c., shall be received as evidence.]—By s. 84, *infra*, all portions of proceedings relating to Commissions of Bankrupt, may be entered of record without any order of the Lord Chancellor; and the production of any instrument so entered, accompanied by a certificate of the proper officer or his deputy, shall be evidence of such instrument being of record, without proof or signature. The latter paragraph of this section, which is not found in the corresponding one, renders a copy of the above admission equally valid with the instruments referred to, and as such, makes them evidence, although they do not relate to *Commissions of Bankrupt.*

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

5 & 6 Vic. c. 122, § 18, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng., re-enacted § 85 of same, from 11 Oct. 1849; omitting the words "*and charges*" and adding the words "*creditor or*" between "*such*" and "*trader*," in line 6.

[1] [Court in which such affidavit shall be filed, as the ease may be.]

[2] (*These words in italics are not in the corresponding section.*)

[3] [Court in its discretion.]

[4] *This clause in italics is new, and not in the corresponding section of 5 & 6 Vic. but is in* § 85, *above-named, substituting the word* "Court" *for* "Commissioners," *and omitting the words* "and charges."

12 & 13 VICT., CAP. 107.

Trader summoned may get Costs.

XVIII. And be it enacted, That where any trader against whom an affidavit of debt is filed as aforesaid shall be summoned to appear before the [said Commissioners or Commissioner][1] every such trader shall have such costs and charges *against the party or parties who filed such affidavit*[2] as such [Commissioners or Commissioner in their or his discretion][3] shall think fit; *or the Commissioner may direct the costs and charges of either party of or incident to or attendant upon such affidavit and summons to abide the event of any action which shall have been brought or shall thereafter be brought for the recovery of such demand, or any part thereof, and in such case such costs and charges shall be costs in the cause, and recovered under the judgment and execution in such action.*[4]

Same Act, § 19, *re-enacted* § 86 of same..

[1] [Custom.]

Trader defendant in an Action—his Costs.

XIX. And be it enacted, That in every such action brought after the commencement of this act, wherein any such creditor is plaintiff and any such trader is defendant, and wherein the plaintiff shall not recover the amount of the sum for which he shall have filed an affidavit of debt under the provisions of this act, such defendant shall be entitled to costs of suit, to be taxed according to the [Course][1] of the Court in which such action shall have been brought; provided that it shall be made appear

SECTION XVIII.

Such Costs and Charges.] The observations at foot of Sec. 6. *supra*, apply equally here as to facilitating the recovery of costs.

12 & 13 VICT., CAP. 107.

to the satisfaction of the Court in which such action is brought, upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, that the plaintiff in such action had not any reasonable or probable cause for making such affidavit of debt in such amount as aforesaid, and provided such Court shall thereupon, by a Rule or Order of the same Court, direct that such costs shall be allowed to the defendant; *and provided such costs are duly taxed and ascertained within such time as shall be directed by such Rule or Order;*[2] and the plaintiff shall, upon such Rule or Order being made as aforesaid, be disabled from taking out any execution for the sum recovered in any such action, unless the same shall exceed, and then in such sum only as the same shall exceed, the amount of the taxed costs of the defendant in such action; and in case the sum recovered in any such action shall be less than the amount of the costs of the defendant, to be taxed as aforesaid, that then the defendant shall be entitled, after deducting the sum of money recovered by the plaintiff in such action from the amount of his costs, so to be taxed, *and ascertained*[2] as aforesaid, to take out execution for such costs in like manner as a defendant may now by law have execution for costs in other cases.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] *The words in italics are not in the corresponding sections of either of the above-named Acts.*

SECTION XIX.

And provided such Costs, &c.]—This provision, as will be seen by reference to the margin, is new, and has not been adopted in the Eng. Consol. Act. It seems a practical precaution to save a plaintiff who has been found to have merits, from being baffled out of his right to issue execution. As Judgment could not be marked for more than the nett sum payable, the omission to tax costs would have disabled the plaintiff from ascertaining what that sum was, and therefore he could not issue execution.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

5 & 6 Vic. c. 122, § 20, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 186; re-enacted § 72 of same, from 11 Oct. 1849.

[1] [personally, (*in both the above.*)]

* *The re-enacting section* (72) *has* "seven days" *and* "eighth day," *instead* of "fourteen days," *and* "fifteenth day."

Same Act, § 21, *re-enacted* § 73, *of same.*

12 & 13 VICT., CAP. 107.

Trader not paying, &c., Judgment Debt.

XX. And be it enacted, that if any plaintiff shall recover judgment in any action personal for the recovery of any debt or money demand, in any of her Majesty's courts of record, against any such trader, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off against such judgment, and such trader shall not within fourteen days after notice in writing [ ][1] served upon him, requiring immediate payment of such judgment debt, pay, secure, or compound for the same, to the satisfaction of such plaintiff, he shall be deemed to have committed an Act of Bankruptcy on the fifteenth* day after service of such notice; provided always, that if such execution shall in the meantime be suspended or restrained, by any rule, order, or proceeding of any Court of Justice having jurisdiction in that behalf, no further proceeding shall be had on such notice, but that it shall be lawful nevertheless for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

Trader disobeying Order of Court of Law or Equity, &c.

XXI. And be it enacted, That if any decree or order shall be pronounced in any cause *or*

SECTION XX.

An Act of Bankruptcy.]—This Act is not contingent, and will therefore support an adjudication where commission within twelve months subsequently, sec. 8, *supra.*

SECTION XXI.

The mode of committing an Act of Bankruptcy, herein contained, was under 6 Geo. IV. c. 16, s. 16 Eng., exclusively confined to traders having privilege of parliament. It was then, by the

12 & 13 VICT. CAP. 107.

matter[1] depending in any Court of *Law or*[1] Equity, or any order shall be made in any matter of Bankruptcy or Lunacy, against any such trader, ordering such trader to pay any sum of money, and such rader shall disobey such decree or order, same having been duly served upon him, the person entitled to receive such sum, under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the Court by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being [ ][2] served with such last-mentioned order fourteen* days before the day therein appointed for payment of such money, shall neglect to pay, *secure, or compound for the same to the satisfaction of the person entitled*[1] *to receive* the same, he shall be deemed to have committed an Act of Bankruptcy on the fifteenth day of the service of such order.

Filing a Declaration of Insolvency.

XXII. And be it enacted, That if any such trader shall file in the office of the Lord Chancellor's Secretary of Bankrupts a declaration in writing (in the form *or to the effect*[1] of schedule (D.) hereunto annexed,) signed by such trader and attested by an attorney or

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] *The words in italics are not in either of the corresponding sections.*

[2] [personally, (*in both the above.*)]

* *The re-enacting section* (73) *has* "seven days" *and* "eighth day," *as in the foregoing section.*

Same Act, § 22, *re-enacted* § 70, *of same.*

[1] *The words in italics are not in the corresponding section.*

corresponding section above, extended to all classes of traders liable to Bankruptcy, and is now, for the first time, introduced here, and is numbered 9, in list of Involuntary Acts, p. 51, *supra*.

SECTION XXII.

This simplifies the Act of Bankruptcy of the same nature contained in 6 Wm. IV. c. 14, s. 22, Ir., by rendering the advertisement in the *Gazette* unnecessary.

A Form of declaration is given in the Schedule, which is extremely simple. This section would seem virtually to repeal the above of W. IV.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] [Fiat in Bankruptcy.]

12 & 13 VICT., CAP. 107.

solicitor, that he is unable to meet his engagements, every such trader shall be deemed thereby to have committed an Act of Bankruptcy at the time of filing such declaration, provided a [Commission of Bankrupt][2] shall issue against such trader within two months from the filing of such declaration; and a copy of such declaration, purporting to be certified by the said Secretary or his clerk, as a true copy, shall be received as evidence of such declaration having been filed.

Filing a Petition for an Arrangement.

12 & 13 Vic. c. 106, § 76, comg. 11 October, 1849.

[1] [such.]

[2] *The words in italics are not in the corresponding section.*

[3] [With respect to arrangements between Debtor and Creditor, under the superintendence and controul of the Court.]

[4] [Petition for adjudication.]

[5] [filed.]

[6] [shall have been dismissed.]

This enactment is altogether new in both countries.

XXIII. And be it enacted, That the filing of a petition by any [ ][1] trader for an arrangement between such trader and his creditors *with the concurrence of a certain number thereof*,[2] under the provisions of this Act, [ ][3] shall be accounted and adjudged conclusive evidence of an Act of Bankruptcy committed by such trader at the time of filing such petition, provided a [Commission][4] of Bankruptcy shall be [issued][5] against him within two months after *notice of*[2] such petition for arrangement [having been filed shall have appeared in the *Dublin Gazette*, as herein-after directed]:[6] provided also, that no Commission of Bankruptcy shall issue unless

SECTION XXIII.

By any Trader.]—See section 90, which enables *any debtor* to petition the Commissioners of Bankrupt, with the concurrence of two-thirds in number and value of his creditors, &c., whereby he obtains protection from arrest whilst his future payments come under the superintendence and controul of the Court. Under the present section, such petition, if filed by one accounted *a Trader*, (as to who are Traders see sec. 10 and note thereto, and page 16 *supra*,) renders him subject to all the laws of Bankruptcy, provided a Commission issue within two months after notice in the *Dublin Gazette*. For Form of Petition see Schedule L to this Act annexed, and for accompanying affidavit see Schedule K. On each of the documents the Registrar is paid a fee of 5s. (sec. 91.) Before whom affidavits are sworn see sec. 69, *infra*.

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and until after such petition for arrangement shall have been dismissed.

Manner of making a Debtor Bankrupt by Affidavit, &c.

XXIV. And be it enacted, That if any single creditor, or any two or more creditors being partners, whose debts shall amount to one hundred pounds or upwards, or any two creditors whose debts shall amount to one hundred and fifty pounds or upwards, or any three or more creditors whose debts shall amount to two hundred pounds or upwards, of any trader within the meaning of the laws [ ][1] respecting Bankrupts, shall file with the proper officer in the office of the Lord Chancellor's Secretary of Bankrupts in *Ireland* an affidavit or affidavits, to be sworn before [any of the persons authorized by this Act to administer oaths,][2] that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall cause him to be served personally with a copy of such affidavit or affidavits, and with a notice in writing stating that such affidavit or affidavits hath or have been filed in the said office, pursuant to this

Corresponding Enactments.

(The verbal differences are within brackets.)

3 & 4 Vic. c. 105, § 8, Ir., *(Act abolishing arrest, &c. and which is in substance an adoption of* 1 *&* 2 *Vic. c.* 110, § 8, *Eng.)*

[1] [now in force.]

[2] [a Master ordinary or extraordinary.]

SECTION XXIV.

In *Dunne* v. *the Queen*, 18 L. Jour. N. S., pp. 41 and 68, it was laid down that an affidavit of debt might still have been made under 1 & 2 Vic. c. 110, as the 5 & 6 Vic. c. 122, sec. 11, by which other provisions were made for similar affidavits, was not necessarily inconsistent with the previous statute, and that such affidavit was an affidavit by virtue of a statute "relating to Bankrupts," and might therefore be sworn before the Registrar of the Court of Bankruptcy, or other person named in 5 & 6 Vic. c. 122, s. 67.

This present section 24, it will appear by the margin above, is taken from 3 & 4 Vic. c. 105, s. 8, Ir., and closely resembles 1 & 2 Vic. c. 110, s. 8, Eng., but on comparing both, it will be found that the words *affidavit or affidavits* stand alone in the latter, without saying before whom to be sworn, whilst in the present section, as well as the one in margin, directions before whom to swear the affidavit, are fully given.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

[3] [Forty-one.]

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Act, and requiring immediate payment of such debt or debts, and if such trader shall not within [twenty-one][3] days after personal service of such affidavit or affidavits and notice, or within such further time as any commissioner of Bankrupt shall order, pay such debt or debts, or secure or compound for the same to the satisfaction of such creditor or creditors, or enter into a bond in such sum and with two such sufficient sureties as shall be approved of by any judge of her majesty's superior Courts at *Dublin*, or any judge of assize, or any assistant-barrister at quarter sessions, or any master in ordinary of the Court of Chancery in *Ireland*, or any of such persons as shall be for that purpose appointed from time to time by any general or special order of the Lord Chancellor of *Ireland*, or, until such appointment shall be made, by any perpetual commissioner appointed for taking acknowledgments of deeds by married women, under the Act for "the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in *Ireland*," to pay such sum or sums as shall be recovered in any action or actions which shall have been brought or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in the same, or to render himself to the custody of the gaoler of the Court in which such action shall have been or may be brought,

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This case is merely cited in order to warn practitioners from being misled by it, as it cannot bear upon the Irish statutes in Bankruptcy.

Within two months from the filing.]—Under 1 & 2 Vic., c. 110, s. 8, Eng., the matter of which is identical with the foregoing, it was held that the day of filing the affidavit should be reckoned as the first day of the two months: Ex p. *Budd*, 5 Jur. 272 ; 1 M. D. & D. 436.

12 & 13 Vict., Cap. 107.

according to the practice of such Court, or within such time and in such manner as the said Court or any judge thereof shall direct, after Judgment shall have been recovered in such action, then and in any such case such trader shall be deemed to have committed an Act of Bankruptcy on the [twenty-second] [1] day after service of such affidavit or affidavits and notice, provided a Commission of Bankruptcy shall issue against such trader within two calendar months from the filing of such affidavit or affidavits, but not otherwise.

If Commission not proceeded on in Three Days.

XXV. And be it enacted, That if [any] [1] Petitioning Creditor [on whose petition a Commission of Bankruptcy shall have been issued] [2] shall not proceed [ ] [3] within three days after [the date of the commission] [4] or within such extended time as [may] [5] be allowed by the [said Commissioners or Commissioner,] [6] the [said Commissioners or Commissioner] [6] may,

Corresponding Enactments.

(The verbal differences are within brackets.)

[1] [forty-second]

1 & 2 Vic. c. 110, s. 8, Eng., *has* 21 days, *as here substituted, instead of* 41 days, *and* 22*nd instead of* 42*nd, as in the above corresponding sec.*

12 & 13 Vic., c. 106, s. 96, Eng., (Consol. Act) comg. 11 Oct. 1849, (*being an alteration of the latter portion of* 5 & 6 Vic. c. 122, s. 4, Eng. *Rep.*)

[1] [the]
[2] [in any petition for adjudication of Bankruptcy]
[3] [and obtain adjudication]
[4] [his petition shall have been filed]
[5] [shall]
[6] [Court]

SECTION XXV.

A Commission of, &c., shall have issued.]—The Statute (6 W. IV., c. 14, s. 35, Ir.,) provided for the substitution of other creditors *after* adjudication, in the event of the Petitioning Creditor's debt being found insufficient to support the Commission, but it was silent on the subject *previous* to adjudication. This was supplied by Rule 2 of Gen. Orders of 1843, Ir., (taken from Sir Anthony Hart's Order of 1st Nov. 1828,) which, in the event of the Petitioning Creditor not proceeding within *four* days after docket struck, allowed any other Creditor to strike a new docket. Rule 2, however, required the Petitioning Creditor to "prosecute *or effectually proceed on* to an adjudication within "eight days" after the date of such commission, if the Bankrupt resided within twenty miles of Dublin Castle, or "fourteen days" if elsewhere, and upon the Commissioner certifying that same was not "effectually proceeded on," the commission was superseded; and when a commission is superseded, it is done at the risk of the Petitioning Creditor, who is bound, "at his own costs" to "sue forth and prosecute the commission until the choice of assignees." 6 Wm. IV., c. 14, s. 31, Ir., which see, and also Rule 2, *infra.*

Within three days after the date of the Commission.]—This will give but two *clear* days. Suppose the commission be dated the 1st., then the proceeding must be within office hours on the 4th; which makes but two days clear. The statute does not adopt the word "effectually," thereby leaving a discretion in the Commissioner to decide what may or may not be effectual. Lord Loughborough's Orders (1793) had "prosecuted within fourteen days," &c., and under that Order a fiat was deemed *prosecuted* where the advertisements declaring the Bankruptcy appeared

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[7] [other]

[8] [on such petition]

[9] [such petition (except the debt of the petitioning creditor)]

[10] [petitioner]

[11] [other]

[12] [or within such extended time as may be granted by the Court for that purpose]

5 & 6 Vic. c. 122, § 24, Eng., comg. 11th Nov. 1842, *Rep.* by 12 & 13 Vic. c. 106, Eng., re-enacted § 238 of same, from 11th Oct. 1849.

[1] [twenty-one days]

[2] [London Gazette]

12 & 13 VICT., CAP. 107.

at any time within fourteen days then next following, upon the application of any [ ][7] Creditor to the amount required to constitute a Petitioning Creditor, proceed to adjudicate [thereon][8] upon the proof of the debt of such Creditor, and of the other requisites to support [such adjudication];[9] but if neither the [Petitioning Creditor][10] nor any [ ][11] Creditor shall within such fourteen days [ ][12] apply to the Court to adjudicate, no further proceeding shall be taken thereon.

If the Bankrupt shall not dispute Commission.

XXVI. And be it enacted, That if the Bankrupt shall not (if he were within the united kingdom at the date of the adjudication) within [two months][1] after the advertisement of the Bankruptcy in the [*Dublin Gazette*][2] or (if he were in any other part of *Europe* at the date of the adjudication) within three months after the date of such advertisement, or (if he were elsewhere at the date of the adjudication) within twelve months after such advertisement,

in the *Gazette.*—Ex p. *Leicester*, 6 Ves. 429; Ex p. *Layton*; Ex p. *Hardwicke*, 6 Ves. 484, and see Ex p. *Henderson*, 2 Rose, 190; Ex. p. *Mavor*, 19 Ves. 530., or where the party was declared Bankrupt within the limited time.—Ex p. *Ellis*, 7 Ves. 135; Ex. p. *Soppit*, Buck. 81; *In re Wood*, 3 Dea. 514. In England a like enactment became the subject of a Rule. By General Orders, Nov. 12, 1842, Eng., Rule 9, applications for extension of time should be supported by affidavit filed in Court, and by Rule 10 the Commissioner was forthwith to cause notice of the time allowed to be sent by post to the Secretary of Bankrupts. By s. 70 of this act the Commissioners are empowered to make Rules and Orders in matters not otherwise provided for, subject to the sanction and confirmation of the Lord Chancellor.

Within fourteen days then next following.]—There is an ambiguity in this phrase as to whether the fourteen days commences from the last of the three days, or from the termination of the extended time; nor does the subsequent phrase, "such fourteen days," help out the meaning. A Rule would supply the defect.

SECTION XXVI.

Any other part of Europe.]—This follows the English statute above, and amends 6 Wm. IV. c. 14, s. 106, Ir., which allowed twelve months from the adjudication to all Bankrupts out of the United Kingdom. The locality of the Bankrupt has reference, according to this section, to the

12 & 13 VICT., CAP. 107.

have commenced an action [ ][3] or other proceeding to dispute or annul the [Commission,][4] and shall not have prosecuted the same with due diligence and with effect, the *Gazette* containing such advertisement shall be conclusive evidence in all cases as against such Bankrupt, and in all actions at law or suits in equity brought by the assignees for any debt or demand for which such Bankrupt might have sustained any action or suit had he not been adjudged Bankrupt, that such person so adjudged Bankrupt became a Bankrupt before the date and suing forth of such [Commission,][4] and that such [Commission][4] was sued forth on the day on which the same is stated in the *Gazette* to bear date;* saving all rights which shall have accrued to any such person as aforesaid previous to the commencement of this Act, and in respect of which any proceedings shall be pending at the time of the commencement of this Act, which shall be adjudged and determined as if this Act had not been passed.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[3] [suit]

[4] [Fiat]

* *This clause, beginning with the word* "saving" *to end of section, is not re-enacted in* § 233, *as above.*

date of the adjudication; the time of his proceeding, to the date of the advertisement; whilst under the 106 sec. of Wm. IV., all had reference to the *adjudication alone.*

Have commenced an action.]—The terms in this section are new. Previous to this act, it was sufficient for the Bankrupt to give notice of his intention to dispute, provided he proceeded therein with due diligence; which left an open for equivocal conduct. The words of this section are less vague; for after commencing an action or other proceedings, &c., he must prosecute with due diligence *and with effect*, otherwise the *Gazette* shall be conclusive evidence against him; whilst under s. 106 of 6 Wm. IV., it was necessary to produce the depositions as to the debt, the trading and the Acts of Bankruptcy, as taken in the presence of the Commissioners, at or before the adjudication, in order to prove the trader to have been a Bankrupt, so as to give the Assignees a Title in any actions or suits in a Court of Law or Equity. Under s. 111 of the same act, no commission or adjudication could be received in evidence in any Court of Law or Equity unless entered of record as therein set forth. In order to enter depositions as of record, it was necessary to petition the Chancellor, which involved time, expense, and payment of office fees. Even when these requisites were observed, each document, on its production in evidence, was open to the usual objections. All this uncertainty, time, and expense, are saved under the present section, by simply producing the *Gazette*. Its provisions are not retrospective; see concluding proviso.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

5 & 6 Vic. c. 122, § 26, Eng., com. 11 Nov. 1842, *Rep.* by 12 & 13 Vic., c. 106, *re-enacted* § 158 of same, from 11th Oct. 1849.

[1] [Fiat]

* *Sic.*

12 & 13 VICT., CAP. 107.

Debtor, when sued, Paying Money into Court.

XXVII. And be it enacted, That if the assignees commence any action or suit for any money due to the Bankrupt's estate before the time allowed by this Act for the Bankrupt to dispute the [Commission] [1] shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the Court in which such action or suit is brought, and all proceedings with respect to the money so paid into Court shall thereupon be stayed until the time aforesaid shall have elapsed; and if within that time the Bankrupt shall not have commenced such action, suit, or other proceeding as aforesaid, and prosecuted the same with due diligence, the money shall be paid out of Court to the assignees, but otherwise shall abide the event of such action, suit, or other proceeding as aforesaid, and upon such event shall be paid out of Court either to the assignees or the person adjudged Bankrupt, as the Court shall direct, and that* after such payment so made into Court it shall not be lawful for the person so adjudged Bankrupt to proceed against the defendant for recovery of the same money.

SECTION XXVII.

This section is to be read with 6 W. 4, c. 14, ss. 107 and 108, Ir. The latter of which secured defendants, from whom the assignees *recovered*, either by judgment or decree, in case a commission were superseded, from all demands thereafter made by the Bankrupt, or supposed Bankrupt, and also all who, without action or suit, *bonâ fide* delivered possession of estates real or personal, or *bonâ fide* paid debts claimed by the assignees; provided the notice to dispute was not proceeded upon within the time and manner set forth in the 106th section thereof.

The present section is more particularly directed to sec. 107, a greater part of which it has copied, adding a proviso to the effect that the money lodged in court shall abide the event of any action or other proceeding prosecuted by the bankrupt in pursuance of his notice. The 107th section only provided for the assignees drawing the money out of court, which was lodged by the debtor to the estate; but did not provide for its disposal in the event of the Bankrupt succeeding in superseding the commission.

12 & 13 VICT., CAP. 107.

Appointment of Official Assignees—their duty.

XXVIII. And be it enacted, That [one or two persons][1] being merchants, brokers, or accountants, or persons who are or have been engaged in trade [and resident in *Ireland*,][2] shall be [appointed][3] by the Lord Chancellor to act as Official Assignee or Assignees in all Bankruptcies prosecuted [before the said Commissioners of Bankrupt],[4] one of which said Official Assignees shall in all cases be an Assignee of each Bankrupt's estate and effects, together with the assignee or assignees to be chosen by the Creditors, such Official Assignee to give such security, to be subject to such rules, to be selected for such estate, and to act in such manner as the [said Commissioners or Commissioner, with the consent of][5] the Lord Chancellor, shall from time to time direct.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

5 & 6 Vic., c. 122, § 48, Eng., (*first portion thereof*) comg. 11 Nov., 1842; *Rep. by* 12 & 13 Vic., c. 106, *confirmed* § 38, 39, of same, from 11th Oct. 1849. (*See also* 1 & 2 W. 4, c. 56, § 22, Eng. *Rep.* by same.

[1] [a number of persons not exceeding thirty in the whole]

[2] [in the United Kingdom]

[3] [chosen]

[4] [in the country]

[5] [Lord Chancellor, or as the Court of Review, or Judge, or any Commissioners of the Court of Bankruptcy, if authorised so to do by any order of]

SECTION XXVIII.

This section presents a new and very important feature in the administration of Bankrupt Law in Ireland—the creation of the office of Official Assignee. It had its origin under 1 & 2 W. 4, c. 56, s. 22, Eng.; previously to which a trial had been made in England, as to the value and efficiency of the office, by the appointment of the Provisional Assignee, under 6 Geo. 4, c. 16, s. 45, Eng. The 1 & 2 W. 4, provided for the appointment, by the Lord Chancellor, of a number of persons, not exceeding *thirty*, who were to act as Official Assignees in town cases. The 5 & 6 Vic. c. 122, s. 48, Eng., provided for a similar appointment of *thirty more*, for country cases; so that in England there are now (or may be) *sixty* Official Assignees.

The 6 W. 4, c. 14, s. 55, Ir., following the enactment of 6 Geo. 4, Eng., enabled the Commissioners in Ireland to appoint "one or more persons," as Provisional Assignees: and the present section enables the Lord Chancellor of Ireland to appoint "one or two persons" (not one or more), to act as Official Assignees. Their duties, liabilities, exemptions, and remuneration occupy this and the following nine sections, which will be found to form a complete subdivision of the statute. To avoid repetition, the reader is referred to chapter VII, page 71, *supra*, and to the Rules and Orders framed by the Commissioners under the provisions of sec. 70 of this act, and confirmed and sanctioned by the Lord Chancellor, on the day when this act came into operation, 1st November, 1849. They are published herewith, see *infra*.

In all Bankruptcies.—The appointment of a Provisional Assignee, under 6 W. 4, was wholly discretional with the Commissioner, and his continuance after the appointment of the Creditors' Assignee, optional with the creditors. It is otherwise now with the Official Assignee. There *must* be one now in *every* Bankrupt case, in whom the estate and effects of each Bankrupt will henceforward vest, jointly with the creditors' Assignees, when chosen. Such is the meaning of the following phrase, which, although not expressed in terms of the utmost precision, cannot altogether be called ambiguous: "one of which said Official Assignees shall in all cases be an assignee of each Bankrupt's estate and effects, together with the Assignee or Assignees to be chosen by the Creditors."

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

No corresponding section.

This was the subject of Rule 22 of Lord Brougham's General Rules and Orders, 12 *Jan.* 1832. *The required amount of surety is set forth in note, infra.*

5 & 6 Vic., c. 122, (remainder of) § 48, Eng. comg. 11 Nov., 1842; *Rep. by* 12 & 13 Vic., c. 106, E., re-enacted § 39 of same, from 11 Oct., 1849.

[1] *The words in italics are not in the corresponding section.*

[2] [every]

[3] [Lord Chancellor, or by the Court acting in prosecution of the Bankruptcy, if authorised so to do by any general or other order of the Lord Chancellor, and whether such Official Assignee be appointed under the provisions of the said recited act or of this act]

12 & 13 VICT., CAP. 107.

Security may be by Recognizance.

XXIX. And be it enacted, That if the security to be given by and for such official assignee be by recognizance, the same shall be acknowledged before the said Commissioners, or one of them, and which recognizance shall be filed in the office of the Lord Chancellor's Secretary of Bankrupts, and shall be entered of Record in the office for the enrolment of matters relating to Bankruptcy; or it shall be lawful for the said Commissioners, if they shall think fit, to accept, as security for such official assignee or assignees, the security of any guarantee society established by Charter or Act of Parliament in any part of *Great Britain* or *Ireland*, in lieu of any other security.

Official Assignees to receive Estate and Effects.

XXX. And *be it enacted, That* [1] all the personal estate and effects, and the rents and profits of the real estate, and the proceeds of sale of all the estate and effects, real and personal, of [the][2] Bankrupt, shall in every case be possessed and received by such official assignees alone, save where it shall be otherwise directed by the [said Commissioners or Commissioner];[3] and all stock in the public funds or of any public company, and all monies,

SECTION XXIX.

Security.]—The extent in Ireland is fixed by the new Rules at £5,000, and that of certain Guarantee Societies is admissible. See Rule 2 *infra*, and see page 71, &c., *supra*.

In England the extent is £6,000. Rule 22 of Lord Brougham's Orders, Jan. 12, 1832. See 2 Arch. B. L. 414. 2 De G. B. L. 227.

SECTION XXX.

And all monies, &c., paid, &c., into the Bank of Ireland.]—The details of this portion of duty are set forth in Rue 16, *infra*, and unmistakeably defined.

12 & 13 Vict., Cap. 107.

exchequer bills, [ ][4] or other public securities, and all bills, notes, and other negotiable instruments, shall be forthwith transferred, delivered, and paid by such official assignee into the bank of [*Ireland*,][5] to the credit of the [said official assignee and of the assignee or assignees chosen by the creditors,][6] to be subject to such order, rule, and regulation for [ ][7] keeping of the account of the said monies and other effects, [ ][8] for the payment and delivery in, investments [ ][9] and delivery out of the same, as the [said Commissioners or Commissioner][10] shall direct; and if any such assignee shall neglect to make such transfer, delivery, or payment, every such assignee shall be liable to be charged [in his account with such sum as shall be equal to interest at the rate of twenty pounds *per cent. per annum* on all such money for the time during which he shall have so neglected to make such transfer, delivery, or payment.][11]

Restricting the authority of the Official Assignee.

XXXI. Provided always, and be it enacted, That nothing herein contained shall extend to authorize any such official assignee to interfere with the assignees chosen by the creditors, in the appointment or removal of a solicitor or attorney, or in directing the time and manner

Corresponding Enactments.

(*The verbal differences are within brackets.*)

[4] [India Bonds]

[5] [England]

[6] [Accountant in Bankruptcy]

[7] [the]

[8] [and]

[9] [and payment]

[10] [Lord Chancellor, or as the Court of Review, or Judge, or Commissioner of the Court of Bankruptcy, if authorised so to do by any order of the Lord Chancellor]

[11] [in the same manner as is provided in cases of neglect by assignees to invest money in the purchase of Exchequer Bills, when directed so to do]

1 & 2 W. 4, c. 56, § 23, Eng., and 5 & 6 Vic. c. 122, § 49, Eng., *both rep. by* 12 & 13 Vic. c. 106, Eng., reenacted § 40 of same, from 11 Oct., 1849.

Verbatim.

Bills, Notes, and other Negotiable Instruments.]—Where and when deposited—how presented for acceptance (if unaccepted)—how contents and dates docketed, see Rule 16. Bills when due how presented, and their proceeds how disposed of, see Rule 17. Bills not paid, protested, &c., Rule 18.

SECTION XXXI.

Of a Solicitor or Attorney.]—The English statutes 1 & 2 Wm. IV. cap. 56, and 5 & 6 Vic. c. 122, have made no alteration in the law as applicable to the solicitor sueing out and prosecuting a fiat in Bankruptcy. He is still appointed or renewed by the majority of the Assignees chosen

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

5 & 6 Vic. c. 122, § 50, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic., c. 106, Eng., re-enacted s. 42 of same, from 11 Oct. 1849.

[1] [Whether appointed under the provisions of the said recited act or of this act]

[2] [said before mentioned]

[3] *(The words in Italics are not in the corresponding section.)*

[4] [such]

[5] [Court authorized to act in the prosecution of such Bankruptcy]

[6] [of the number hereby prescribed]

[7] [subject as aforesaid]

Same Act, § 53, re-enacted in substance, § 48 of same.

12 & 13 VICT., CAP. 107.

of effecting any sale of the Bankrupt's estate or effects.

Lord Chancellor may remove Official Assignee, and fill vacancy.

XXXII. And be it enacted, That it shall be lawful for the Lord Chancellor to remove any official assignee, [ ][1] and from time to time as any vacancy may occur in the [ ][2] number of official assignees to appoint some other such person as aforesaid, *or who has acted as the managing clerk of an official assignee for the period of seven years*[3] to fill any vacancy so occurring; and in case of the death or removal of any [ ][4] official assignee who shall have been appointed to act in any Bankruptcy *matter*[3] it shall be lawful for the [said Commissioners or Commissioner, subject to any rules to be made by virtue of this Act,][5] to appoint another official assignee [ ][6] to act [ ][7] in the same Bankruptcy *matter*[3] in the place of the assignee who shall so have become dead or been removed.

Official Assignees under Commissions now pending.

XXXIII. And be it enacted, That *in all Bankruptcy matters which shall be pending at*

by the creditors. Ex p. *Tomlinson*, 2 Rose, 66, and by the same statutes the Official Assignee is not to interfere with the Assignees chosen by the creditors in such appointment or removal.

SECTION XXXII.

To remove any Official Assignee.]—Rule 28 provides for his removal in the event of retaining for more than one week under his controul "more than £50 of money belonging to any one estate," or £250 in the aggregate of all estates under his care; or he may be charged with 20 per cent. per annum on the Excess. When removed see concluding provision in sec. 34, *infra.*

Who has acted as Managing Clerk.] This is not in the English Acts, nor can it operate for seven years after 1st Nov. 1849, unless the Managing Clerk of the Official Assignee in England be eligible. All other persons must be Traders and resident in Ireland. s. 28, *supra.*

12 & 13 VICT., CAP. 107.

the time of the passing of this Act[1] it shall be lawful for the [said Commissioners or Commissioner,][2] at [their or his][3] discretion to appoint some one of the *aforesaid*[1] official assignees [ ][4] to act with the existing assignees, if any, under such [Commission,][5] and to direct the existing assignees to pay and deliver over to such official assignee *or assignees*[1] all monies, books, papers, and effects whatsoever in their possession or custody as such assignees [ ];[6] and all the real and personal estate of the Bankrupt under such [Commission][5] shall immediately on such appointment vest in such official assignee jointly with the existing assignees, if any, in like manner as if the proceedings in the said Bankruptcy *matter*[1] had originally been commenced [subsequent to the passing][7] of this Act, without prejudice to any action or suit commenced or any contract entered into by the existing assignees at the time of the passing of this Act.

Official Assignee may act until Creditor's Assignee chosen.

XXXIV. And be it enacted, That until an assignee shall be chosen by the Creditors of

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] *(The words in italics are not in the corresponding section.)*

[2] [court which shall thenceforth act in the prosecution of such fiat]

[3] [its]

[4] [appointed, or to be appointed under the said recited act, or this act]

[5] [Fiat]

[6] [save where it shall be otherwise directed by the Lord Chancellor or by the court acting in the prosecution of such Fiat, if authorized so to do by any General or other Order of the Lord Chancellor]

[7] [by virtue]

The following is the concluding proviso in 5 & 6 Vic. c. 122, § 48, Eng.,

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SECTION XXXIII.

Pending at the time of the passing of this Act.]—This must be taken to be the 1st of August, 1849. The time specified for the *commencement* of the Act is 1st Nov. 1849, (sec. 1) but the *passing* of the Act, which operated by legal relation from the first day of the session in which it passed, (4 T. R. 660) has, by the statute 33 Geo. III. c. 13, Eng., and 35 Geo. III. c. 12, Ir., reference to the day when the same received the royal assent, as written on the roll of parliament.

At their or his discretion.]—Sec. 28, *supra*, imposes a necessity of appointing an Official Assignee "in all cases," of each Bankrupt's estate and effects, unqualified by any relation to time past or future. The discretion here vested in the Commissioners in matters pending at the passing of this Act, would lead to the inference that s. 28 had not a retrospective effect.

SECTION XXXIV.

Until an Assignee shall be chosen.]—This places the Official Assignee in the same position as the Provisional Assignee, under s. 55 of Wm. IV. c. 14, Ir.; and being deemed a Sole Assignee

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

comg. 11 Nov., 1842, *as well as of* 1 & 2 W. 4, c. 56, § 22, Eng., comg. 11 Jan. 1832; *both Rep. by* 12 & 13 Vic. c. 106; *re-enacted in substance,* § 40 *of same*:—

[Provided always, that until assignees shall be chosen by the creditors of each Bankrupt, such official assignee, so to be appointed to act with the assignees to be chosen by the creditors, shall be enabled to act, and shall be deemed to be, to all intents and purposes whatsoever, a sole assignee of each Bankrupt's estate and effects.]

12 & 13 VICT., CAP. 107.

any Bankrupt the official assignee, if nominated by the said Commissioners or Commissioner, shall be enabled to act, and shall be deemed to be to all intents and purposes a sole assignee of the property of such Bankrupt, and, if the said Commissioners or Commissioner shall so order, may sell or otherwise dispose of such property, or any part thereof, and make such allowance out of the property of such Bankrupt for the support of himself and his family as the said Commissioners or Commissioner shall direct; and the property vested in any official assignee, alone or jointly with such assignee chosen by the Creditors, shall not remain in such official assignee alone or jointly with such assignee chosen by the Creditors if such official assignee shall resign or be removed from his office, nor in the heirs, executors, or administrators of such official assignee, nor in the surviving assignee alone in the case of the death of such official assignee, but all such property shall in every such case go to and be vested in the successors in office of such official assignee, alone or jointly with the assignee chosen by the Creditors (if any), as the case may be.

5 & 6 Vic., c. 122, § 54, Eng. comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng.; re-enacted § 41 of same, from 11 Oct. 1849.

Official Assignee not personally Responsible.

XXXV. And be it enacted, That no official assignee shall be deemed personally responsible

of the property of such Bankrupt, this section must operate as a virtual repeal of the 55th sec. just mentioned. See their duties, page 71, *supra*, and New Rules, *infra*.

If nominated.]—A contingency is provided for under this phrase, the existence of which is scarcely reconcilable with the unconditional and imperative terms of the 28th section, *supra*.

Such Allowance, &c., for support.]—By 6 Wm. IV. c. 14 s. 132, Ir., the Commissioner was empowered *before* Assignees chosen, to make necessary allowance from time to time for support of the Bankrupt and family, and the Assignees, when chosen, were empowered to do the same, with Commissioners' approbation. This is following up the same principle. Compare both sections.

12 & 13 VICT., CAP. 107.

or liable for any act done by him, or by his order or authority, in the execution of his duty as such official assignee, by reason of the Petitioning Creditor's debt, trading, and Act of Bankruptcy upon which the adjudication of Bankruptcy under [the Commission][1] shall have been grounded, or of any or either of such matters, being insufficient to support such adjudication.

Debtor and Creditor account to be Furnished.

XXXVI. And be it enacted, That, fourteen days before a dividend shall be advertised under any Bankrupt's estate, there shall be sent by the official assignee to each Creditor's assignee of such estate a debtor and creditor account between the official assignee and such estate, showing also the monies remaining uncollected under such estate, and the cause of such monies remaining uncollected, a copy of which account shall be delivered to *the Bankrupt, or to*[1] any Creditor who shall apply for the same, and have

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] [such Fiat]

Same Act, § 55, *re-enacted* § 189, *of same.*

[1] *The words in italics are not in the corresponding section.*

SECTION XXXV.

Personally responsible or liable, &c.]—This exemption applies to liabilities for acts done in pursuance of the statute, and arising out of an adjudication void or voidable by reason of the insufficiency of any of the conditions precedent above set forth.

SECTION XXXVI.

Before a dividend.]—By 6 Wm. IV. cap. 14, sec. 125, "the Commissioner shall not sooner "than four, nor later than twelve calendar months from the issuing the Commission appoint a "sitting," &c. That section provided for the Commissioner making "an order for a dividend in "writing under his hand," that order to contain "the amount of the debts proved, of "the money remaining to be divided, how much in the pound to be paid to every creditor, and "the money allowed to be retained by the Assignees, with the reasons therefor." The section concluded with a proviso that no dividend should be declared unless account audited and statement verified on oath.

This then read in conjunction with section 39, *infra*, as to Audits and Dividends, and section 30, *supra*, as to possession and receipt by Official Assignees, renders the above a matter of imperative necessity, that neither the Creditors nor their Assignees should be taken by surprise.

To the Bankrupt.]—This seems an equitable measure, and it is surprising it has not been adopted in the English statutes, and is not in the Consol. Act, 1849, Eng.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] [Fiat]

[3] [to any other person, such person not being a creditor]

[4] [court authorised to act in the prosecution of such fiat]

1 & 2 W. 4, c. 56, § 57, Eng., *Rep. by* 12 & 13 Vic., c. 106, Eng., *re-enacted in substance*, § 44 *of same, from* 11 Oct. 1849.

This clause is also to be found in 5 & 6 Vic. c. 122, § 51, *at close thereof.*

[1] *The words in italics are not in any of the corresponding sections.*

[2] [in the said Court of Bankruptcy]

A *proviso* in 1 & 2 Vic. c. 110, § 56, Eng. comg. 1 Oct. 1838, and in 3 & 4 Vic. c. 107, § 44, Ir., 1 Nov. 1840, (*both being verbatim.*)

12 & 13 VICT. CAP. 107.

proved or claimed a debt under such [Commission,][2] upon his applying for the same to the official assignee, and [ ][3] paying such sum, not exceeding two shillings and sixpence, as shall be settled by the [said Commissioners.][4]

Remuneration to Official Assignee.

XXXVII. And be it enacted, That it shall be lawful for the said *Commissioners or*[1] Commissioner before whom any person shall be adjudged a Bankrupt, [ ][2] or who shall appoint an official assignee under the power herein-before given for that purpose, to order and allow to be paid out of the Bankrupt's estate to the official assignee thereof, as a remuneration for his services, such sum of money as shall appear to such Commissioner, upon consideration of the amount of the Bankrupt's property, and the nature of the duties to be performed by such official assignee, to be just and reasonable; *provided, however, that such remuneration shall always be made by way of per-centage on the total amount of the monies realized.*[1]

Pay half-pay Pensions of Bankrupts.

XXXVIII. [And be it enacted, That the Commissioners of Bankrupt, or one of them,

Paying such Sum.]—Under the English acts, a creditor gets a copy without paying for it, but any one may obtain a copy, although not a creditor, on payment of a like sum as above. See corresponding section.

SECTION XXXVII.

As a remuneration.]—No fixed per centage is laid down in the New Rules. In England 1 per cent. and 1½, subject to be increased or diminished by the Court of Review. See this subject explained, page 74, *supra.*

SECTION XXXVIII.

This provision is not in any of the English Bankrupt Acts. Most likely instances of such persons entering into trade, seldom, if ever, occurred at the period of the passing of the early

12 & 13 VICT., CAP. 107.

may][1] order such portion of the pay, half-pay, salary, emolument or pension of any [Bankrupt] [2]as on communication from the said [Commissioner][3] to the Secretary [of][4] War or the Lords Commissioners of the Admiralty, or the Commissioners of the customs or excise, or the chief officer of the department to which [such Bankrupt][2] may belong or may have belonged, or under which such pay, half pay, salary, emolument or pension may be enjoyed by [such Bankrupt,][2] or [to the Court of Directors of the East India Company,][5] they respectively may, under [ ][6] their hands, or under the hand of [ ][6] their *respective*[7] chief secretary or other chief officer for the time being, consent to in writing to be paid to [the official assignee][8] in order that the same may be applied in payment of the debts of [such Bankrupt];[2] and, such order and consent being lodged in the office of her Majesty's Paymaster General, or of the Secretary of the said Court of Directors, or of any other officer or persons appointed to pay or paying any such half pay, salary, emolument, or pension, such portion of the said pay, half pay, salary, emolument, or pension as shall be specified in such order and consent shall be paid to [such official as-

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] [Provided always that it shall be lawful for the said Court to]

[2] [such prisoner]

[3] [Court]

[4] [at]

[5] [the said Court of Directors, he or]

[6] [his or]

[7] *The word in italics is not in the corresponding section.*

[8] [such assignee or assignees]

English Bankrupt Laws. The provision seems equitable, and there appears no reason why it should not be generally adopted. It will be found in 58 Geo. III. c. 138 s. 27, Ir., with scarcely any difference.

Pay, Half-pay.]—The Half-pay of a Military Officer cannot be sold. See *Flarty* v. *Odlum*, 3 T. R. 681; *Littledale* v. *Montrose*, 4 T. R. 246; *Stone* v. *Littledale*, 2 Anst. 533; *Berwick* v. *Reade*, 1 H. Bl. 627; and therefore does not pass to his Assignees, neither does the pension of a Military Officer of the East India Company.—*Gibson* v. *East India Company*, 7 Scott, 74. 5 Bing, N. C. 262.

Emoluments.]—Annuities pass to the Assignees. *Brandon* v. *Robinson*, 1 Rose, 187.

Pension.]—A Pension to the Advocate of the Admiralty for services done, granted during pleasure, by Order of Council—apportioned with consent of Lords of Admiralty. Ex p. *Battine*, 4 B. & Ad. 690. 1 N. & Man. 579

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[9] [the said assignee or assignees]

[10] [Court]

5 & 6 Vic. c. 122, § 27, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted as to Audits,* § 185 *of same; as to dividends,* §§ 187, 188, *from* 11 Oct. 1849.

[1] [Court]

[2] [Fiat in Bankruptcy]

[3] [Fiat]

Same Act, § 28, *re-enacted* § 168 of same.

[1] [Fiat]

12 & 13 VICT. CAP. 107.

signee,][9] until the said [Commissioners or Commissioner][10] shall make order to the contrary.

Audits and Dividends after last Examination.

XXXIX. And be it enacted, That it shall be lawful for the [Commissioners][1] authorized to act in the prosecution of any [Commission of Bankrupt, or one of them,][2] whenever such [Commissioners or Commissioner][1] shall think fit, at or after the sitting appointed for the last examination of the Bankrupt named in such [Commission][3] to audit the assignees accounts, and to make a declaration of dividend under such [Commission,][3] subject nevertheless to such advertisement, and such other provisions relating to such audits and dividends, as are now required in respect of audits and dividends under Bankrupts' estates, except such provisions as relate to the limitation of time in any manner respecting such audits and dividends or the appointment thereof.

Three months Wages or Salary to Servants or Clerks.

XL. And be it enacted, That when any Bankrupt under a [Commission][1] issued after the commencement of this Act shall have been

SECTION XXXIX.

To audit the Assignee's accounts.]—By 6 Wm. IV. c. 14, s. 124, Ir., the Commissioner could, at the last examination, appoint a sitting, not sooner than four months after the Commission, nor later than six months after the last examination, for an audit, giving twenty-one days notice in the *Gazette.* At this sitting, the Assignees, if required, were obliged to submit to examination on oath. This section empowers the Commissioner to make a like scrutiny, without limiting him as to time (see close of this section.) The Official Assignee is bound by Rule 12 (see Rules, *infra,* and page 73, *supra,*) to keep a book, called, "The Audit and Dividend Book," and by Rule 27, his accounts must be "drawn up in the ordinary form of Debtor and Creditor account," he himself to be the "debtor therein," with dates and numbers corresponding with the numbers of vouchers and receipts. He is also required to give fourteen days' notice of audit to the Creditors (Rule 26.) See also section 36, *supra.*

12 & 13 Vict., Cap. 107.

indebted at the time of issuing the [Commission][1] against him to any servant or clerk of such Bankrupt in respect of the *yearly or other*[2] wages or salary of such servant or clerk, it shall be lawful for the [Commissioners][3] authorized to act in the prosecution of such [Commission, or one of them,][1] upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding three months wages or salary, and not exceeding thirty pounds, to be paid to such servant or clerk, out of the estate of such Bankrupt; and such servant or clerk shall be at liberty to prove under the [Commission][1] for any sum exceeding such last mentioned amount.

Corresponding Enactments.

(The verbal differences are within brackets.)

[1] [Fiat]

[2] *The words in italics are not in the corresponding section.*

[3] [Court]

Wages not exceeding Forty Shillings to Labourer or Workman.

XLI. And be it enacted, That when any Bankrupt under a [Commission][1] issued after the commencement of this Act shall have been indebted at the time of issuing the [Commis-

Same Act, § 29, *re-enacted* § 169 of same.

[1] [Fiat]

SECTION XL.

Yearly or other wages.]—This amends the 6 W. IV. c. 14, sec. 59, Ir., (which was similar to 6 Geo. IV. c. 16, s. 48, Eng.,) by the adoption of the words "yearly or other," before *wages* or *salary*. The 48th sec. of Geo. IV. was taken not to include a mere weekly hiring, although it was not limited to a yearly hiring. It should, however, be continued. Ex p. *Gough*, M. & B. 414; 3 Dea. & C. 189. A coach guard and servants at a weekly salary, Ex p. *Skinner*, M. & B. 417; 3 Dea. and C. 332, or weekly labourers or workmen, Ex p. *Crawford*, Mon. 270, or the workmen of a coachmaker, working by the piece, and paid accordingly—held not servants within the section, Ex p. *Gullier*, Mon. & M'A. 95, S. C. on appeal, Mon. 264. But now see provision in sec. 42, next *infra*, for labourers and workmen. A clerk and foreman engaged at a weekly salary and two suits of clothes in the year, was held a weekly hiring, Ex p. *Humphrey*, M. & B. 413; 3 D. & C. 114. A person engaged as a traveller, at an annual salary, Ex p. *Neal*, Mon. & M'A. 194. The mate of a vessel, although one of the owners, yet, being hired at certain wages, Ex p. *Homberg*, 2 M. D. & D. 642; 6 Jur. 898, is a servant within the section. Where a servant left the service months before, but not voluntarily—held entitled to six months' salary, Ex p. *Saunders*, 2 Dea. 40; 2 Mon. & A. 684; (now, under present section, three months,) but otherwise, had he left without compulsion, Ex p. *Gee*, 3 Dea. 341, 563; 1 Mon. & C. 99; Ex p. *Bennett*, 3 Mon. & A. 669. Misconduct may deprive of benefit derivable from this section; Ex p. *Hampson*, 2 M. D. & D. 462.

Three months' wages or salary.]—The 6 Wm. IV., c. 14, s. 59, Ir., had six months. The months are lunar, Ex p. *Humphrys*, M. & B. 413; 3 Dea. & C. 114.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] [Fiat]

[2] [Court.]

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sion][1] against him to any labourer or workman of such Bankrupt in respect of the wages or labour of such labourer or workman, it shall be lawful for the [Commissioners][2] authorized to act in the prosecution of such [Commission, or one of them,][1] upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding forty shillings, to be paid to such labourer or workman out of the estate of such Bankrupt; and such labourer or workman shall be at liberty to prove under the [Commission][1] for any sum exceeding such last mentioned amount.

Search Warrants Granted.

5 & 6 Vic. c. 122, § 30, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted* § 106 *of same, from* 11 Oct. 1849.

[1] [Court]

[2] [Fiat in Bankruptcy]

XLII. And be it enacted, That in all cases where it shall be made to appear to the satisfaction of the [Commissioners][1] authorized to act in the prosecution of any [Commission of Bankrupt or one of them,][2] that there is reason to suspect and believe that property of any Bankrupt is concealed in any house, premises, or other place, not belonging to such Bankrupt, such [Commissioners or Commissioner are and][1] is hereby directed and authorized to

SECTION XLI.

Labourer or Workman.]—This section is new in Ireland, and removes a difficulty hitherto felt as to persons not clerks or servants. See note to foregoing sec., and Ex. p. *Gough*, *Skinner*, *Crawford*, *Gullier*, therein cited.

SECTION XLII.

In all cases.]—As the interpretation clause (s. 118), contains the following words, "this act shall not extend to either *England* or *Scotland*, except where the same are expressly mentioned," this section cannot be said to extend the implied or supposed jurisdiction given the Commissioner under 6 Wm. IV., c. 14, ss. 41 and 42 Ir., the former as to breaking open any house, chamber, shop, chest, &c., of the Bankrupt in *England*, the latter as to the messenger obtaining search-warrants from Justices of the Peace in England or Ireland.

Of any Bankrupt.]—If it be law that no man is a Bankrupt until he be *adjudged* so by a competent tribunal, then this section cannot relate to any proceedings except they be *subsequent* to adjudication; and it is supposed cannot, therefore, be brought into operation in aid of sec. 4,

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grant a search warrant *in the form or to the effect in Schedule (H.) hereunto annexed*[3] to any person appointed by [such Commissioners or Commissioner][4] and it shall be lawful for such person to execute such warrant according to the tenor thereof, and such person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen or concealed.

Where Member of a Firm is Bankrupt.

XLIII. And be it enacted, That if any person adjudged Bankrupt after the commencement of this Act shall at the time of his Bank-

Corresponding Enactments.

(The verbal differences are within brackets.)

[3] *The words in italics are not in the corresponding section. The* 106*th sec. above quoted, refers, however, to a Form in schedule V.*

[4] [the Court in which the adjudication against such Bankrupt shall have been made,]

Same Act, § 31, *re-enacted* § 152 *of same.*

supra page 83, which see. It should be noticed that the Form of Warrant, given in Sch. V., Consol. Act, 1849, contains the following phrase, which is not in the Form in Sch. H., referred to in the present section, "And under which the said A. B. has been *adjudged* bankrupt." Section 4, *supra*, it has been submitted, relates to persons against whom a commission has issued, but upon whom an adjudication has not been declared. See note, p. 83.

Grant a search-warrant.]—Their origin is doubtful. Coke says they were contrary to law, 4 Inst., 176. Lord Camden says they crept in by imperceptible practice, 11 St. Tr. 321. Lord Hale says they were constantly resorted to, 2 Hale, 113. But they were never granted without *oath*, being considered as judicial acts had upon due examination, 2 Hale, 114–150, and see 1 Ch. Crim. L. 65, and the Forms in the books *passim*, "Whereas it appears to me," &c., "by the information *on oath of* A. B.," &c., and in Sch. H. to present Act, "Whereas by evidence duly taken *upon oath*, &c., and the same has Sch. V. of the Consol. Act, 1849, referred to above. See 9 Geo. 4., c. 55. Ir., and 7 & 8 Geo. 4., c. 28, Eng., as to their application, and Abbot, Ch. J., as to the nature and extent of the oath requisite in certain cases of *mere suspicion* of felony. *Elsee* v. *Smith.*—1 D. & Ryl., 97, 102, 3. The instances where they are allowable are defined in statutes; and the above Larceny Acts will be found to have extended them to embezzlement and obtaining goods under false pretences, but to have gone no further. See 2 Gabb. Crim. L., 157. A warrant to search for and secure the person *and papers* of the publisher of a libel was illegal. *Money* v. *Leach*, 19. St. Tr. 1002.

To any person appointed by such Commissioner.]—Under 6 W. 4., c. 14, sec. 42, Ir., the messenger was entitled to obtain a search warrant for concealed goods, &c., from a Justice of the Peace in England or Ireland. By that statute no distinction seems to have been made between cases of Bankruptcy and other cases, as to the steps necessary to obtain search warrants. The messenger was obliged to make it "appear to the satisfaction" of the justice that there was "reason to suspect *and believe* that property of the Bankrupt" had been "concealed in any house, premises, or other place not belonging to such Bankrupt." Upon the same terms any other person was entitled to a search warrant. It seems merely to have raised the messenger exhibiting the Commissioner's authority to the same level with persons seeking for their own property which they believed had been either stolen or embezzled.

SECTION XLIII.

It had been held that where a separate fiat (in England) was sued out against one of several partners that the assignees of the Bankrupt partner might join with the solvent partners in suing for a joint debt. *Thomson* v. *Frere*, 10 East, 418. This, where the solvent partners

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(The verbal differences are within brackets.)

[1] [the Court authorised to act in the prosecution of the fiat against such bankrupt,]

[2] *The words in italics are not in the corresponding section.*

[3] [Court]

5 & 6 Vic. c. 122, § 32, Eng., comg. 11 Nov. 1842, *Rep.* by 12 & 13 Vic., c. 106, *re-enacted* § 251 of same, from 11th Oct. 1849.

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ruptcy be a member of a firm, it shall be lawful for [the said Commissioners of Bankrupt, or one of them,][1] to authorize the assignee, upon his application, to commence or prosecute any action at law or suit in equity, in the name of such assignee and of the remaining partner *or partners,*[2] against any Debtor of the partnership; and such judgment, decree, or order may be obtained therein as if such action or suit had been instituted with the consent of such partner; and if such partner *or partners*[2] shall execute any release of the Debt or demand for which such action or suit is instituted, such release shall be void; provided that every such partner shall have notice given him of such application, and be at liberty to show cause against it, and if no benefit is claimed by him by virtue of the said proceedings shall be indemnified against the payment of any costs in respect of such action or suit, in such manner as such [Commissioners or Commissioner][3] upon his application, shall direct; and that it shall be lawful for such [Commissioners or Commissioner,][3] upon the application of such partner, to direct that he may receive so much of the proceeds of such action or suit as such [Commissioners or Commissioner][3] shall direct.

Bankrupt not Surrendering.

XLIV. And be it enacted, That if any person adjudged Bankrupt after the commence-

were consenting parties. The above section was framed to meet the contingency of one or more of a partnership withholding consent. The section in this Act has the advantage of the word *partners* in the plural, which appears above in italics, and is not in the English Act.

SECTION XLIV.

Any person adjudged Bankrupt.]—All Offences enumerated in this Section apply to none other but persons *after adjudication.*

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ment of this Act shall not before three of the clock on the day limited for the surrender of such Bankrupt, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing to be left at the usual or last known place of abode or business of such person, or personal notice in case such person be then in prison, and notice given in the [*Dublin Gazette*]¹ of the issuing of the [Commission,]² and of the sittings of the [Commissioners]³ authorized to act in the prosecution of the [Commission]² against him, surrender himself to such [Commissioners, or one of them,]³ and sign or subscribe such surrender, and submit to be examined before such

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(*The verbal differences are within brackets.*)

¹ [London Gazette]

² [Fiat]

³ [Court]

On an indictment for not surrendering under the corresponding section, (s. 32 of 5 & 6 V., above) Coleridge J., held that the production of the adjudication enrolled, with the copy of the Gazette, sufficiently supported the indictment, although it averred the trading, petitioning creditors' debt, Act of Bankruptcy, &c.,—*R.* v. *Hall*, cited lower down, page 125.

The day limited for the surrender.]—The first duty of a Bankrupt is to *surrender*, and if in person or custody under process, attachment, execution, commitment or sentence, he can be brought up if desirous, 6 W. IV., c. 14, s. 138, Ir., and now if in prison or custody in England, Scotland, or Ireland, and at the expense of the estate, (sec. 83 *infra*,) and he must sign and subscribe his surrender and submit himself to examination, and all his property and transactions to discovery—otherwise he is guilty of a transportable felony.

Notice given in the Dublin Gazette.]—In England the *Gazette* was proved by production, without any evidence of its having been bought at the *Gazette* printers, or elsewhere. *Forsyth's Case.* Rus. and Ry., 277.

Submit to be examined.]—In this examination he must answer, although the answers may subject him to penalties, 1 Atk., 200, or may tend to establish an Act of Bankruptcy, 1 Glyn & J., 58. If the answer would tend to shew he was guilty of a criminal act, he is not bound to give it.—Mon. & M'A., 212, 2 Dea. & C., 214; see also Mon. & B., 203. Nor is he bound to answer any person but the Commissioner—*Ex p. Cassidy*; 2 Rose, 217; 19 Ves., 324. If property remain unaccounted for by reason of his refusal to answer the Commissioner, he may be committed, 1 Rose, 407; 3 V. & B., 244. And although in so doing his answer may tend to convict him of concealing his effects, which is a criminal act, he is bound to disclose his property. 2 Dea. & C., 214, 226, 230. As to what are full answers, there is no technical rule to guide. The enquiry would be, 'do the answers satisfy the mind of a reasonable person?' and if his answers appear incredible, they are unsatisfactory—*Ex p. Nowlan*, per Lord Kenyon, 6 T. R., 216; *Goddart's* case, per Lord Eldon, 1 Glyn & J., 45; 2 V. & B., 244; 1 Rose, 407. If he swear to a disposition of his property, which no reasonable man would believe, the Commissioner is authorized to convict him under 6 W. IV., c. 14, s. 52. Ir; In re *Caulfield*, 5 Ir., L. R., 358.

Notice should be sent to the Commissioner if the Bankrupt wish to purge his offence by submitting—per Buller, 1 T. R., 654. And even then he may be recommitted if he persist—under a new warrant, however—Cook, 454; 2 Rose, 396, 400. He may, however, simply answer *to the best of his remembrance and belief*; and if he swear he cannot answer further, it will be sufficient—*Perrot* v. *Ballard*, 2 Ch. Ca., 72. To a question whether the Bankrupt had not executed a conveyance to his son of his estate and effects within six months—answer 'not to my know-

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(*The verbal differences are within brackets.*)

[3] [Court]

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[Commissioners, or one of them,][3] from time to time, upon oath, or if any such Bankrupt upon such examination shall not discover all his real and personal estate, and how, and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereto, (except such part as shall have been really and *bonâ fide* before sold or disposed of in the way of his trade, or laid out in the ordinary expenses of his family,) or if any such Bankrupt shall not upon such examination deliver up to the said [Commissioners][3] all such part of such estate, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power, (except the necessary wearing apparel of himself, his wife and children,) or if any such Bankrupt shall remove, conceal, or embezzle any part of such estate to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his Creditors, every such Bankrupt shall be deemed guilty of felony, and be liable

ledge,' held satisfactory—*Norris*' case; 2 Jac. and W., 437; and see Arch. B. L., (1844) 323; De Gex. B. L., (1848) 580.

From time to time.]—It has been held by the Court of Review, (Sir J. Cross, *diss.*) that *after passing* last examination he may be called upon to answer questions touching the concealment of his effects. In re *Smith*, Mont. & B., 203. 2 D. & Ch., 230; and see Ex. p. *Heath*. M. & B., 184; 2 D. & Ch., 214.

Books, papers, writings, &c.]—Where the Bankrupt's books were in the office of a Master in Chancery, in Ireland, and the Assignees of England required their production, the expense of procuring them was ordered to be paid out of the estate. Ex p. *Cridland*, 2 Rose, 164. 3 Ves. & B., 94. The policy of the Law seems to require a Bankrupt to furnish some written disclosure or discovery of his estate, at least at his last examination—an account of his dealings—his capital—his expenditure, &c., so as to account for his having become a Bankrupt. Per Abbot, Ch. J. *Davis* v. *Mitford*, 4 B. & A., 365.

With intent to defraud Creditors.]—Lord Denman after consulting with Patteson, J., held that an indictment for not surrendering was bad for not alleging that it was with "intent to defraud his creditors;" the words applying to all the offences in the section. *Hill's* case. 1 C. & K., 168, This was under 6 Geo. IV., c. 16, section 112, Eng., same as 6 Wm. IV., c. 14, section 130, Ir., and the same ruling will apply to the following case since decided by Coleridge, J.; the Statutes

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to be transported for life, or for such term not less than seven years as the Court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned, with or without hard labour, in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

Enlarging Time for Surrender—Free from Arrest.

XLV. And be it enacted, That the [Commissioners][1] authorized to act in the prosecution of any [Commission of Bankrupt, or one of them][2] shall have power, as often as such [Commissioners or Commissioner][1] shall think fit, from time to time, to enlarge the time for the Bankrupt named in such [Commission][3] surrendering himself for such time as such [Commissioners or Commissioner][1] shall think fit, so as every order be made six days at least before the day on which such Bank-

Corresponding Enactments.

(The verbal differences are within brackets.)

5 & 6 Vic. c. 122, § 33, Eng., comg. 11th Nov. 1842, *Rep.* by 12 & 13 Vic. c. 106; *re-enacted in substance,* § 104 *of same, (as to concluding proviso thereof,) from* 11 Oct. 1849.

[1] [Court]

[2] [Fiat in Bankruptcy]

[3] [Fiat]

6 Geo. IV., 6 W. IV., 5 & 6 Vic., and 12 & 13 Vic., being all alike therein. Upon these words it was held by Coleridge, J. under the corresponding section, that an indictment against a Bankrupt for not surrendering upon the day limited, which did not so aver, was bad. *R.* v. *Hall,* Newc. Sp. Ass., 1846. MS. cited in Grainger's Roscoe, (Crim. Ca., 3rd Ed.) 301.

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To enlarge the time, &c.]—And the Bankrupt must attend to be examined at the enlarged time; see Arch. B. L., (1844) 323. And if the Commissioner be prevented from sitting on that day, can appoint another day for that purpose—Ex p. *Wilson,* 2 Dea. & C. 388. Time will be enlarged where not surrendering arose from unavoidable necessity—*Anon.* 15 Ves. 1—or from accident—Ex p. *Dawson,* Cox, 48—or from the Commissioner not attending on the day limited for his surrender—Ex p. *Grey,* 1 Ves. 195—or from any innocent default of the Bankrupt—Ex p. *Higginson,* 12 Ves. 496: Ex p. *Shiles,* 2 Rose, 381; 1 Mad. 241: Ex p. *Jeffrey,* 2 Dea. & C., 686—or the like, although the assignees object—Ex p. *Shiles, supra.* But not when the Bankrupt has absented himself purposely—Ex p. *White,* 2 Bro. 47; Ex p. *Rodgers;* Ambr. 307: Ex p. *Grey, supra,* (except under special circumstances; Ex p. *Berryman,* 1 Glyn & J., 223)—nor after being eight years in America, Bankrupt not having since return used due diligence in communicating with his assignees or creditors, per Lord P.—Ex p. *Wyse,* 3 Ir. Eq. R., 361. But, at least in Ireland, the Lord Chancellor has at all times jurisdiction to direct the Commissioners to accept surrender.—In re *Morgan,* 1 Drur. & Welsh, 582. And although such order might not protect him from prosecution, yet it will be considered as a declaration of the Chancellor's opinion that the Bankrupt had no fraudulent intent in omitting to surrender—Ex p. *Shiles,* 2 Rose, 381; 1 Dea. Dig., Cr. Law, 122. But the Chancellor may bar the prosecution altogether by superseding—Ex p. *Ricketts,* 6 Ves., 445; 1 Atk., 222.

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(*The verbal differences are within brackets.*)

[4] *The words in italics are not in the corresponding section.*

* 6 Geo. 4, c. 16, § 118, Eng., *rep. as above.*

[5] [be it enacted, that it shall be lawful for the Commissioners]

[6] [adjourn such examination *sine die*, and he]

[7] [calendar months]

[8] [they]

[9] [as aforesaid]

* *Same*, 6 G. 4, *as above*, § 117.

[10] [so signed as aforesaid]

[11] [Westminster]

This latter clause is re-enacted in § 113 *of the English Consol. Act*, 1849. *See also* 6 W. 4, c. 14, § 136, Ir.

5 & 6 Vic. c. 122, § 34, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic., c. 106, Eng., re-enacted s. 252 of same, from 11 Oct. 1849.

Verbatim (except the words in italics.)

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rupt was *bound*[4] to surrender himself; *and [the Commissioners or Commissioner shall also have power][5] at the time appointed for the last examination of a Bankrupt, or any enlargement or adjournment thereof, to [order that said Bankrupt][6] shall be free from arrest or imprisonment for such time not exceeding [three][7] months as [such Commissioner][8] shall *from time to time*[4] by endorsement upon the summons [of such Bankrupt][9] appoint;* and if any officer shall detain any such Bankrupt after he shall have shown such summons [and endorsement][10] to him such officer shall forfeit to such Bankrupt, for his own use, the sum of five pounds for every day he shall detain such Bankrupt, to be recovered by action of Debt in any Court of Record at [Dublin][11] in the name of such Bankrupt with full costs of suit.

Destroying or Falsifying Books, &c.

XLVI. And be it enacted, That if any Bankrupt shall after an Act of Bankruptcy committed, or in contemplation of Bankruptcy *or Insolvency*, or with intent to defeat the object of this or any other statute relating to Bankrupts, and after the commencement of this Act, have destroyed, mutilated, altered, or falsified any of his books, papers, writings, or securities, or made or been privy to the mak-

SECTION XLVI.

Destroyed, mutilated, falsified, &c., his Books, &c.]—Under 6 W. IV., c. 14, s. 148, Ir. These acts disqualified the Bankrupt from receiving his certificate. He might under s. 134 of the same act have subjected himself to an indictment for perjury, but criminal prosecutions upon matters of inference are seldom successful. This section, therefore, leaves no open for objection, but renders the wrong doer subject directly to a prosecution at the suit of the Crown. The offence must have been committed *after an Act of Bankruptcy committed* or *in contemplation* of Bankruptcy or Insolvency, or with intent to defeat any of the Bankrupt statutes. It must also have been committed after the 1st November, 1849, and in all these cases the Bankrupt must have committed the act with *the intent to defraud* his creditors.

ing of any false or fraudulent entry in any book of account or other document, with intent to defraud his Creditors, every such Bankrupt shall be deemed to be guilty of a misdemeanour and, being convicted thereof, shall be liable to be imprisoned in any common gaol or house of correction for any term not exceeding three years, with or without hard labour.

Obtaining Goods on Credit, under False Pretence.

XLVII. And be it enacted, That if any Bankrupt shall within three months next preceding his Bankruptcy, and after the commencement of this Act, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, have obtained on credit from any other person any goods or chattels, with intent to defraud the owner thereof, or if any Bankrupt shall within the time aforesaid, with such intent, have removed, concealed, or disposed of any goods or chattels so obtained, knowing them to have been so obtained, every such person so offending shall be deemed to be guilty of a misdemeanour, and, being convicted thereof, shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

5 & 6 Vic., c. 122, § 35, Eng., comg. 11 Nov., 1842, *Rep. by* 12 & 13 Vic., c. 106 ; re-enacted § 253 same, from 11 Oct. 1849

Same verbatim.

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Any Bankrupt.]—If a Bankrupt be one who has been so "adjudged and declared" by a competent tribunal, then this section cannot aid section 4, *supra*, which embraces persons against whom a commission has issued and *prior to adjudication.*

Guilty of a Misdemeanour.]—There are two separate offences under this section amounting to Misdemeanour. The first is, obtaining goods on credit under *false* colour of dealing in the ordinary course of trade and with *intent to defraud* the owner in so doing, and within three months before *Bankruptcy*, (not *Act of Bankruptcy committed* as in the preceding section.) It is submitted that the bearing of the phrase *false* would be a question for a jury, just as *intent* would be, and no extent of negligence or imprudence, however culpable, could amount to a false pretence unless fraud formed an element in its composition. The other offence is, removing, concealing, or disposing of goods, knowing them to be so obtained. This latter offence is subject to like qualifications as the foregoing—namely, falsity, intent and time, (3 months as above).

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(The verbal differences are within brackets.)

See 6 Geo. IV., c. 16, s. 36, Eng., *Rep. by* 12 & 13 Vic., c. 106, *re-enacted s.* 117 *of same from* 11 Oct. 1849. *By this section the Commissioners were, and still are, empowered to summon the Bankrupt,* "whether he had obtained his Certificate or not," *and upon neglect or refusal to* "authorize any person they should think fit to apprehend and arrest" *him and* "bring him before them," *but they had not the power to commit him under that section, except upon the subject of examination, &c.*

[1] *The provision in italics is not in the English Acts.*

No section precisely corresponding, but see 6 W. 4, c. 14, § 52, Ir., *(being verbatim with* 6 Geo. 4, c. 16, § 39, Eng., *rep. by* 12 & 13 V. c. 106, Eng.)

These sections contain the following provision: "If any person be committed by the Commissioner for refusing to answer, or for not fully answering any question put to him,

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Disobeying Summons—Committed to Prison.

XLVIII. And be it enacted, That it shall be lawful for either of the said Commissioners, by any warrant under his hand and seal authorizing the person therein named to apprehend and arrest any Bankrupt for disobeying the summons of the Commissioners or either of them, to order and direct that such Bankrupt when arrested shall be *committed to and detained in such prison as the said Commissioners shall think fit, there to remain, without bail,*[1] until he shall (when so required) submit himself to one of the said Commissioners to be sworn, and full answers made to his satisfaction to such questions as he shall put to him, and sign and subscribe such examination.

Warrant of Committal for Unsatisfactory Answering.

XLIX. And be it enacted, That in any warrant of committal of any person by the said Commissioners for refusing to answer any question, or for not fully answering to the satisfaction of the said Commissioners, or for refusing to sign and subscribe his examination,

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Committed to and detained in such Prison.]—The Commissioners in England are restricted from committing to prison under 1 & 2 W. IV., c. 56. See note to section 4, page 84, *supra,* see also page 78.

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This section must be read in conjunction with ss. 49 & 52 of 6 Wm. IV., cap. 14, Irish. The 49th sec. of 6 Wm. IV., fully defines four offences for which a Bankrupt may be committed without bail: namely, 1st, if he refuse to be sworn; 2nd, if he refuse to answer; 3rd, if he do not fully answer; 4th, if he refuse to sign and subscribe. Three out of these form the subject of the present provision; namely, the second, third, and fourth, the first not coming within its intendment.

In any warrant of Committal, &c., it shall not be necessary to set forth or specify any such Questions nor any part of the Examination.—This is new, and operates directly as a repeal of the correlative portion of 6 Wm. IV., c. 14, s. 52, Ir.

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it shall not be necessary to set forth or specify any such questions, nor any part of the examination of the person so committed, but it shall be sufficient to refer in the said warrant to the examination or deposition of the person committed as remaining on the file of proceedings, and to specify in said warrant the precise date of the said examination or deposition so referred to; provided, however, that in every case in which any person shall be so committed for refusing to answer, or for not fully answering any question put to him, every such question shall be specified in the examination or deposition of the person committed remaining on the file of proceedings, and so referred to as aforesaid; and provided also, that a copy of the said examination or deposition so referred to, shall be delivered personally to the person committed within sixteen hours next after his actual committal to prison; and in default of said copy being so delivered the person committed shall be discharged from custody,* either by the said Commissioners, or by the Court or Judge before whom such person may be brought by Habeas Corpus, with such costs, if any, as said Commissioners, Court or Judge,

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(The verbal differences are within brackets.)

by the said Commissioner, he shall in his warrant of commitment *specify every* such question."

The following is in s. 261 *of the Eng. Consol. Act,* (12 & 13 V., c. 106.)

"That if any person be committed by the Court for refusing to answer or for not fully answering any question put to him by the Court, such Court shall in its Warrant of Commitment *specify every* such question."

* *The whole of this clause is new, and not in any of the English statutes.*

The time hitherto occupied in drawing up the portions of Examination required to have been set forth in the warrant, and the technical nicety required in framing the instrument itself, was a great obstruction to the business of the Court, and an encouragement to profligate witnesses. It is unnecessary to quote any of the numerous cases ruling a provision now become obsolete in Ireland, and in consequence of which warrants have extended sometimes to six closely written pages large foolscap. This is all obviated by the short Form given in Schedule E. The same security, however, against the effect of prejudice or injustice in the mind of the Court is afforded the witness under the present section; for within sixteen hours after his committal a copy of the examination referred to, must be personally delivered to him. If not, he is discharged. It is reasonable to suppose that this provision cannot be objected to by any one who is not determined to defraud his Creditors and obstruct the course of justice. The substance of the present law is not however altered. This provision, whether by a fatality or otherwise, was not adopted in the new English Bankrupt Consolidation Act.

Warrant.]—A short Form is given in the Schedule. In the event of committal the parties interested should be careful to have the proper Form prepared, as the one in the Schedule contains the alternative. Where the committal of the Bankrupt was for refusing to sign his

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may deem just; and, save as herein above provided, no person shall be discharged from such custody for mere matter of form, but upon the merits only; and any warrant for unsatisfactory answering shall be in the form or to the effect in Schedule (E.) to this Act annexed; and any warrant for refusing to answer, or for being guilty of any riot or disturbance in any Court held by such Commissioners, or for interrupting in said Court the said Commissioners or Commissioner in the exercise of their or his duty, shall be respectively in the forms or to the effect in Schedules (F.) and (G.) respectively; and every messenger or other person against whom any action shall be brought for anything done in executing any warrant of the said Commissioners may plead the general issue, and give the said warrant and the special matter in evidence: Provided also, that if any person so committed shall sue forth any writ of Habeas Corpus in order to be discharged from such commitment, it shall be lawful for the Court or Judge before whom such person shall be brought (if thereto required by the person committed, or by the assignee of the Bankrupt's estate,)† to inspect and consider the whole of

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

† *6 Geo. IV. and 6 Wm. IV., and s.* 261 *of the Consol. Act as above, all have* "shall, if required thereto by the party committed," instead of the words here in parenthesis.

Examination, and the warrant authorized the gaoler to detain him "until he should submit himself, and full answer make to the satisfaction of the Commissioners to all such questions as should be put to him, and sign and subscribe his Examination," it was held bad, it being an authority to retain him until he should answer, which by the warrant it appeared he had already done.—Ex p. *Leake*, B. & C. 234. Where the warrant was "till he conform to our authority," held bad.—*Bracey's* case, 1 Salk. 348; 1 Ld. Raym., 69. "Or otherwise be discharged by due course of Law," held bad.—*Holingshead's* case, 1 Salk. 351; 2 Ld. Raym. 851. "Till he shall full answer make to all such questions as shall be put to him as aforesaid," bad.—2 W. Bl. 882, 1141, and 1144. On a *habeas corpus*, the person may object that the question was illegal, though he did not object before the Commission.—1 Mon. and A. 207. Questions put in reference to the preparation of his Schedule are *legal*, within the meaning of 6 Wm. IV., c. 14, s. 49, and evasive answers thereto justify committal.—Ex p. *Downing*, 8 Ir. L. R. 494.

From the whole examination, that the answers, &c., are satisfactory.]—On an application to Queen's Bench to discharge a Bankrupt, his affidavit containing additional statements, is not admissible. The party must be bound by the warrant.—*In re Caulfield*, 5 Ir. L. R. 358.

12 & 13 Vict., Cap. 107.	Corresponding Enactments.
the examination of such person so referred to as aforesaid, and if it shall appear from the whole examination that the answer or answers of the person committed is or are satisfactory, such Court or Judge shall and may order the person so committed to be discharged.	*(The verbal differences are within brackets.)*
Obstructing Messenger, a Misdemeanour. L. And be it enacted, That if any person shall knowingly and wilfully resist, hinder, or obstruct any messenger of the said Commissioners in the execution of his duty as such messenger, every such person so offending shall be deemed guilty of a misdemeanour, and, being thereof duly convicted, shall be liable to such pecuniary fine and imprisonment, with or without hard labour, as the Court before which such conviction shall be had may judge fit.	*No corresponding enactment.*
Bankrupt in Prison may be released. LI. And whereas it occasionally happens that persons in prison for debt who have been adjudged Bankrupts, and who have surrendered [under the Commission issued against them] [1] are nevertheless detained in prison during the	11 & 12 Vic. c. 86, § 1, Eng., *Rep. by* 12 & 13 Vic. c. 106. Eng., *re-enacted* § 40 *of same, from* 11 Oct. 1849. [1] [to their Fiats]

SECTION L.

In England this is a contempt of the Great Seal, and punishable as such.—Ex p. *Page*, 17 Vesey, 59; Ex p. *Dixon*, 8 Vesey, 104; Ex p. *Titner*, 1 Atk. 186; Ex p. *Craigs*, 1 Rose, 25: and see Arch. B. L. 118; De Gex, B. L. 186. When an offence of the above nature was committed, it was necessary to apply for an attachment to the Lord Chancellor, which, from the great delay, as well as the costs attending the application, was very often the occasion of leaving the offence and its consequences un-redressed.

The Consolidation Act, England, has not adopted any enactment similar to this, so that we stand alone with regard to this salutary provision. The 6 Wm. IV., c. 14, s. 158, which gave the Commissioner full power to commit to prison those who interrupted the proceedings, limited the offence to its commission "in such Court."

SECTION LI.

This is the first instance of a section in the body of the statute commencing with a preamble.

This and the following section are taken from the short statute in the margin. It contains but two sections, and it was doubtful whether it extended to Ireland or not. The same observations of Lord Chancellor Brady, made *In re Hickey*, 10 Ir. Eq. R. 437, with respect to the statute

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] [*The corresponding section has*:—and are unable to obtain their release by any application to any Court of Justice]

[3] [Courts of Bankruptcy]

[4] [to his Fiat]

[5] [any Commissioner]

[6] [Fiat]

12 & 13 VICT., CAP. 107.

proceedings under the Commission, which occasions great inconvenience, and it also occasionally happens that Bankrupts whose certificates have been refused are taken in execution by Creditors who have not proved their Debts under the Commission, and are detained in prison, [ ][2] and it is expedient to empower the [said Commissioners of Bankrupt][3] to release such persons, if they shall think: Be it enacted, That where any person has been adjudged Bankrupt, and has surrendered [under the Commission issued against him][4] and obtained his protection from arrest, pursuant to the practice in Bankruptcy, if such person shall be in prison for Debt at the time of his obtaining such protection, [the Commissioners or Commissioner][5] acting under such [Commission][6] may order his immediate release from prison, either absolutely or upon such condition as such Commissioner shall think fit: Provided always, that such release shall in nowise affect any rights of the Creditor at whose suit he may be in prison against the debtor, except the right of detaining him in prison whilst protected from imprisonment by order of the [Commissioners or Commissioner.][3]

11 & 12 Vic., c. 86, s. 1, Eng., *Rep. by* 12 & 13 Vic., c. 106—*how far re-enacted or amended, see sec.* 159 *of same.*

Bankrupt in Execution under Ca. Sa. may be Released.

LII. And be it enacted, That if any Bank-

8 & 9 Vic., c. 48, the abolition of oaths in Bankruptcy cases, will also apply to the statute 11 & 12 Vic., c. 86, as above. Some doubt was entertained equally respecting both these statutes, whether they applied to Ireland or not, but the decision in *Hickey's* case will be found equally applicable to both statutes. "I do not think it (8 & 9 Vic., c. 48) applies to this country. It "speaks of Bankrupts who become such under 'a Fiat,' and that is a word exclusively applicable "to England, and which has not been introduced here. There is nothing in the act to show that "a Commission of Bankruptcy, which is the proceeding we use here, is intended to be included in "the word 'fiat.' It may be an omission in the act, but I cannot help that." This will be found to be a most beneficial clause, and one for a long time desired.

SECTION LII.

The observations at foot of last section equally apply to this section.

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rupt whose last examination shall have been adjourned sine die, or whose certificates shall have been suspended or refused, shall be in execution or taken in execution under a Capias ad satisfaciendum at the suit of any Creditor who might have proved under the Commission and be detained in prison, [the said Commissioners or Commissioner][1] may order his release, after he shall have undergone such term of imprisonment, not exceeding [one year,][2] as to such [Commissioners or Commissioner][3] may seem a sufficient punishment for such offences as he may appear to such Commissioner to have been guilty of.

Prosecution against Bankrupt.

LIII. And be it enacted, That it shall be lawful for the [Commissioners or Commissioner][1] authorized to act in the prosecution of any [Commission of Bankrupt][2] issued after the commencement of this Act, upon the request in writing of at least three creditors (not being partners) who shall have respectively proved debts of the amount of fifty pounds or upwards under such [Commission][3] to direct the assignees of the Bankrupt named in such [Commission],[3] if he shall be suspected of or charged with the commission of any of the offences specified in this act, to institute and carry on a prosecution of such Bankrupt for such offence, and to order the costs and expenses to be incurred in such prosecution to be paid out of the estate and effects of said Bankrupt, and

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] [any Commissioner acting under his Fiat]

[2] [two years]

[3] [Commissioner]

And see also concluding provision of 5 & 6 Vic. c. 122, § 23.

5 & 6 Vic., c. 122, § 36, Eng. comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 255 *of same, from* 11 Oct. 1849; *but the direction of the Court limited to the assignees in the first instance, in default whereof then to Official Assignee alone, or Creditors, &c. as herein.*

[1] [Court]

[2] [Fiat in Bankruptcy]

[3] [Fiat]

SECTION LIII.

For proofs in prosecutions against Bankrupt, see Roscoe's Criminal Cases, by Grainger, (1846) p. 300; Arch. Crim. Pl., (1849) p. 304; 2 Chitty's Crim. L., p. 402.

(The verbal differences are within brackets.)

such assignees shall thereupon institute and carry on such prosecution; and in case the said assignees shall refuse or neglect to institute and carry on to conviction such prosecution, having no lawful or reasonable impediment made known to and allowed by the said [Commissioner or Commissioners][1] the said [Commissioner or Commissioners][1] may order the same to be instituted and carried on [ ][4] by the Creditors making such request as aforesaid, as the said [Commissioner or Commissioners][1] may think fit.

[1] [Court]

[4] [either by the Official Assignee alone or]

Discharged by Certificate.—Partner not.

5 & 6 Vic. c. 122, § 37, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849. *The provisions of this section become the subject of secs.* 198, 199, 200, 203, 204, 205, 206, 207, *in the English Consol. Act*, 1849.

LIV. And be it enacted, That every Bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force at the time of issuing the [Commission][1] against him, shall be discharged from all debts due by him when he became Bankrupt, and from all claims and demands made proveable under the [Commission][2] in case he shall obtain a certificate of such conformity, so signed and

[1] [Fiat in Bankruptcy]

[2] [Fiat]

SECTION LIV.

This section is similar to 6 Wm. IV., c. 14, s. 140, Ir., (which was a *verbatim* copy of 6 Geo. IV., c. 16, s. 121, Eng.) and which can now only apply to certificates obtained thereunder. That section was held to discharge the goods as well as the person. A *Fi. Fa.* was set aside on motion, under which the goods of a certificated Bankrupt, acquired after the Bankruptcy, were seized.—*Davis* v. *Shapley*, 1 B. & Ad. 54.

Shall obtain a Certificate.]—The Certificate is an instrument discharging the Bankrupt "from all debts due by him when he became Bankrupt, and from all claims and demands hereby made proveable under the Commission."—6 Wm. IV., cap. 14, sec. 140. It was to be signed by the Creditors, four-fifths number and value, over £20, testifying their consent, or three-fifths number and value after six months from last examination, or nine-tenths in number.—Sec. 141. To render this Certificate effectual, it was necessary for the Commissioner, under his hand and seal, to certify to the Lord Chancellor that the Bankrupt had made full discovery, &c., and in all things conformed, &c., and *that the Creditors duly signed, &c.* The Bankrupt then had to make oath in writing that there was no fraud in the obtaining thereof. After this it was laid before the Chancellor, who before he allowed it to pass, heard the Creditors' objections, if any (ibid.) By the present section it is no longer necessary for the Creditors to sign; the whole being left under the discretion and controul of the Court; see also the six sections of this act next following. The practice now will be for the Commissioner, in writing, under hand and seal, to certify that such Bankrupt has made a full discovery, &c., and in all things conformed, &c., the Bankrupt

12 & 13 Vict., Cap. 107.

allowed and subject to such provisions as herein-after mentioned; and no certificate of such conformity by any such Bankrupt shall release or discharge such Bankrupt from such debts, claims, or demands, unless such certificate shall be obtained, allowed, and [conformed][3] according to such provisions: provided always, that no such certificate shall release or discharge any person who was partner with such Bankrupt at the time of his Bankruptcy, or was then jointly bound or had made any joint contract with such Bankrupt; provided also, that nothing herein contained shall affect the validity of any certificate allowed by the Lord Chancellor [ ][4] previous to the commencement of this act.

Not entitled to Certificate, if loss by Gaming, &c.

LV. Provided always, and be it enacted, That no Bankrupt shall be entitled to [such Certificate,][1] and that any such certificate, if obtained, shall be void, if such Bankrupt shall have lost by any sort of gaming or wagering in one day twenty pounds, or within one year next preceding his Bankruptcy two hundred pounds, or if he shall, within one year next preceding his Bankruptcy, have lost two hundred pounds by any contract for the purchase or sale of any Government or other stock, where such contract was not to be per-

Corresponding Enactments.

(The verbal differences are within brackets.)

[3] [confirmed]

[4] [or Court of Review]

5 & 6 Vic. c. 122, § 38, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 201 *of same, from* 11 Oct. 1849.

[1] [the certificate under this Act]

then will have to make oath exactly as he had before. In fact, the Certificate will be the same as heretofore, excepting the Creditors' signature. They can be heard, however, against its confirmation, as hitherto, before the Lord Chancellor. As to when it is absolutely null and void, even after being obtained by the Bankrupt, see *infra*, ss. 55. 57, 58.

SECTION LV.

Lost by any sort of Gaming, &c., in one day, £20.]—Where evidence was given of the loss of £20, the Commissioners had no jurisdiction to grant the certificate although he may have won more than the sum lost on the same day—Ex. p. *Newman*, 2 Gl. & J., 329. This case was under 6 Geo. IV., c. 16, s. 130, Eng., same as 6 Wm. IV., c. 14, s. 148, Ir.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] [Fiat]

5 & 6 Vic. c. 122, § 39, Eng., comg. 11 Nov. 1842; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 198 *of same, from* 11 Oct., 1849.

[1] [Court]

[2] [Fiat in Bankruptcy]

[3] *The words in italics are not in the corresponding section.*

[4] [such Fiat]

12 & 13 VICT. CAP. 107.

formed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract, or if such Bankrupt shall after an Act of Bankruptcy, or in contemplation of Bankruptcy, or with intent to defeat the object of this or any other statute relating to Bankrupts, have concealed, destroyed, altered, mutilated, or falsified, or cause to be concealed, destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making any false or fraudulent entry in any book of account or other document, with intent to defraud his Creditors, or shall have concealed any part of his property, or if any person having proved a false Debt under the [Commission,][2] such Bankrupt being privy thereto or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

How to obtain Certificate of Conformity.

LVI. And be it enacted, That it shall be lawful for the [Commissioners][1] authorized to act in the prosecution of any [Commission of Bankrupt][2] heretofore issued or hereafter to be issued, *or one of them,*[3] on the application of the Bankrupt named in [the Commission][4] to appoint a public sitting for the allowance of such certificate to the Bankrupt named in [such Commission,][4] (whereof and of the purport whereof twenty-one days notice shall be given

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SECTION LVI.

This section has been noticed in the Introduction, page 12, *supra.* See also ss. 54 and 55 preceding and notes thereto.

12 & 13 Vict., Cap. 107.

in the [Dublin][5] Gazette and to the solicitor of the assignees,) and at such sitting any of the Bankrupt's Creditors may be heard against the allowance of such certificate, but it shall not be requisite for such certificate to be signed by any of the Creditors of such Bankrupt; and such [Commissioners or Commissioner][1] having regard to the conformity of the Bankrupt to the laws relating to Bankrupts, and to the conduct of the Bankrupt as a trader before as well as after his Bankruptcy, shall judge of any objection *either then made or appearing on the proceedings*[3] against allowing such certificate, and either find the Bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require: Provided always, that no certificate shall be such discharge unless such [Commissioners or Commissioner][1] shall, in writing under hand and seal, certify to the [Lord High Chancellor of *Ireland*][6] that such Bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and unless the Bankrupt make oath in writing that such certificate was obtained fairly and without fraud, and unless the allowance of such certificate shall, after such oath, be confirmed by the [Lord Chancellor,][6] against which confirmation any of the Creditors of the Bankrupt may be heard, [ ].[7]

Corresponding Enactments.

(The verbal differences are within brackets.)

[5] [London]

[1] [Court]

[3] *The words in italics are not in the corresponding section.*

[6] [Court of Review]

[7] [before such Court]

Not, &c., to be signed by any of the Creditors].—This operates as a repeal of the first portion of 6 Wm. IV., c. 14, s. 141, Ir.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

5 & 6 Vic. c. 122, § 40, Eng., comg. 11 Nov. 1842, *Rep.* by 12 & 13 Vic., c. 106, Eng. *re-enacted* § 202 *of same, from* 11*th Oct.* 1849.

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Contracts, to forbear Opposition, void.

LVII. And be it enacted, That any contract or security made or given by any Bankrupt or other person unto or in trust for any Creditor, or for securing the payment of any money due by such Bankrupt at his Bankruptcy, as a consideration or with intent to persuade such Creditor to forbear opposing or to consent to the allowance or confirmation of such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable, and the party sued on such contract or security may plead the general issue, and give this Act and the special matter in evidence; *and the certificate obtained by any Bankrupt who shall have made or given or been party or privy to the making or giving any such contract or security shall be absolutely null and void.*[1]

[1] *The words in italics are not in the corresponding section.*

Same Act, § 41, *re-enacted* § 270 *of same.*

Penalty for obtaining Money as an inducement to forbear.

LVIII. And be it enacted, That if any Creditor of a Bankrupt shall obtain any sum of money, or any goods, chattels, or security for money, from any person, as an inducement

SECTION LVII.

Payment of Money.]—If the Bankrupt or any person for him pay money for a like purpose he may recover back in an action for money had and received—*Smith* v. *Bromley*, 2 Doug., 696, and see 1 Arch. B. L., 343; 1 De G., 628.

To forbear Opposing.]—The 6 Wm. IV., c. 14, s. 143, Ir., is *verbatim* with this section as far as the words "such creditor." The enactment therein renders void any "contract or security" made "as a consideration or with intent to persuade such creditor to *consent to or sign* such certificate." The enactment in the present section renders such void, if the consideration be "to forbear opposing or to consent to the allowance or confirmation of such certificate." It being no longer "requisite for such certificate to be signed by any of the Creditors," (s. 56) the provision in Wm. IV., was no longer necessary. But as "any of the Bankrupt's Creditors may be heard against the allowance of such certificate," then a source of corruption similar to the last was likely to arise, and the present section provides to meet it.

And the Certificate, &c., null and void.]—This is a new provision in Ireland, and did not exist as to the late analogous offence under Wm. IV., cited above. It adds one to the number of offences specifically set forth in s. 148 of the same Act of Wm. IV., rendering void the certificate.

12 & 13 VICT., CAP. 107.

for forbearing to oppose or for consenting to the allowance or confirmation of the certificate of such Bankrupt, every such Creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, goods, chattels, or security so obtained, (as the case may be,) to be recovered as hereinafter provided; *and the certificate obtained by any Bankrupt who shall have given or caused to be given, or been party or privy to giving, any sum of money, or any goods, chattels, or security for money, for any of the purposes above mentioned, shall be absolutely null and void.*[1]

After Certificate, if Arrested, &c.—Discharged.

LIX. And be it enacted, That any Bankrupt who shall, after such certificate shall have been confirmed, be arrested, or have any action brought against him, for any debt, claim, or demand proveable under the [Commission][1] against such Bankrupt, shall be discharged, upon entering an appearance, and may plead in general that the cause of action accrued before he became Bankrupt, and may give this Act and the special matter in evidence; and such Bankrupt's certificate, and the confirmation thereof, shall be sufficient evidence of the trading, Bankruptcy, [Commission,][1] and other proceedings precedent to the obtaining such certificate; and if any such Bankrupt shall be taken in execution or detained in prison for such debt, claim, or demand, where judgment has been obtained before the confirmation of his certificate, it shall be lawful for any Judge of the Court wherein judgment has been so obtained,

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding sections.*

Same Act, § 42, *re-enacted* § 205 of same.

[1] [Fiat]

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

5 & 6 Vic., c. 122, § 43, Eng., comg. 11 Nov., 1842, *Rep. by* 12 & 13 Vic., c. 106 Eng.; *re-enacted* § 204 of same, from 11 Oct. 1849.

[1] [the Fiat]

Same Act, § 44, *re-enacted in substance*, § 195 *of same.*

[1] [Fiat]

12 & 13 VICT., CAP. 107.

on such Bankrupt producing his certificate, to order any officer who shall have such Bankrupt in custody by virtue of such execution to discharge such Bankrupt, without exacting any fee, and such officer shall be hereby indemnified for so doing.

Certificated Bankrupt not liable for Promise, &c.

LX. And be it enacted, That no Bankrupt, after such certificate shall have been confirmed, shall be liable to pay or satisfy any debt, claim, or demand for which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement made or to be made after the suing out of [said Commission,][1] unless such contract, promise, or agreement be made in writing, signed by the Bankrupt, or by some person thereto lawfully authorized in writing by such Bankrupt.

Allowance to Bankrupts.

LXI. And be it enacted, That every Bankrupt who shall have obtained his certificate under any [Commission][1] issued after the commencement of this Act, if the net produce of his estate in hand shall be any order of dividend (with or without prior dividend) pay

SECTION LX.

The evil of allowing parties under such circumstances to involve themselves by fresh promises had been met by 6 Wm. IV., c. 4, s. 149, Ir., which was the same *verbatim* as 6 Geo. IV., c. 16, s. 131, Eng., and is still retained in s. 204 of the Consol. Act, 1849, above noted in margin.

SECTION LXI.

Under any Commission issued after the commencement of this Act.]—This section applying only to persons obtaining certificates under this act, leaves the question as to future liability involved in doubt as it had been in England since the passing of the corresponding act above, 5 & 6 Vic., 122; nor is it settled by section 195 of the Consol. Act, 1849. The 6 Wm. IV., c. 14, s. 145, Ir., provided that the persons *so discharged by such certificate as aforesaid* unless his estate pay *every creditor* 15s. in the pound, shall be only protected as to *his person*, but *his*

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the Creditors who before or at the time of making such order have proved debts under the [Commission][1] ten shillings in the pound, shall be allowed and paid five pounds per centum out of such produce, provided such allowance shall not exceed four hundred pounds; and every such Bankrupt, if such produce shall, with or without prior dividend, pay such Creditors twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings per centum, provided such allowance shall not exceed five hundred pounds; and every such Bankrupt, if such produce shall, with or without prior dividend, pay such Creditors fifteen shillings in the pound or upwards, shall be allowed and paid as aforesaid ten pounds per centum, provided such allowance shall not exceed six hundred pounds; and provided always, that such allowance as aforesaid shall not be payable to any Bankrupt until after the expiration of twelve months from the date of the [Commission,][1] and such allowance shall then be payable only in the event of the dividends paid to the Creditors who at any time before the expiration of such twelve months shall have proved debts under the [Commission][1] being of the requisite amount in that behalf aforesaid, *and shall not be payable to any Bankrupt who shall not have been a trader for at least twelve consecutive months before the date of the Commission;*[2] and if at the expiration

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[1] [Fiat]

[2] *The words in italics are not in the corresponding section.*

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future estate and effects shall vest in the assignees, &c. Section 2 of this act repeals all laws at variance with it and is silent upon the point.

Ten shillings in the pound, &c.] The same three classes run through all the latter statutes in England from 6 Geo. IV., to the Consol. Act, 1849, and likewise appear in 6 Wm. IV., Ir. (above quoted) sec. 146; namely, 15s., 12s. 6d., 10s. in the pound; the allowance to be 10, 7½, and 5 per cent, with a maximum of £600, £500, and £400 respectively.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

[2] *The words in italics are not in the corresponding section.*

[3] [of such time]

[4] [Court]

[5] [such]

[6] [and]

5 & 6 Vic. c. 122, § 44, Eng., comg. 11th Nov. 1842, *Rep.* by 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance*, § 196 *of same*, *from* 11 Oct. 1849.

[1] [Fiats]

12 & 13 Vic. c. 106, § 180 Eng, *taken from* 6 Geo. 4, c. 16, s. 57 Eng., *in substance a maximum rate of* 4½ *per cent. per annum being fixed*, *whereas in* 6 Geo. 4, *the rate was* "as allowed by the Court of King's Bench, in actions upon such bills or notes," *and same*

12 & 13 VICT., CAP. 107.

[of twelve months from the date of the Commission][3] the dividends paid as aforesaid shall not amount to ten shillings in the pound, *or if no dividend shall have been ordered or paid*,[2] it shall be lawful for the [Commissioners or Commissioner][4] to allow [any][5] Bankrupt, *whether he shall or shall not have been a trader for twelve months before the date of the Commission*,[2] so much as the assignees and [Commissioners][4] shall think fit, not exceeding three pounds per centum, [or][6] three hundred pounds.

Allowance to one Partner.

LXII. And be it enacted, That in all joint [Commissions][1] under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner may not be entitled to any allowance.

Interest on Debts—when.

LXIII. And be it enacted, That upon all debts or sums certain whereupon interest is not reserved or agreed for, overdue at the issuing of the Commission of Bankruptcy, and proveable thereunder, and payable at a certain

SECTION LXII.

This provision existed *totidem verbis* in 6 Wm. IV., c. 14, s. 147, Ir., and was taken from 6 Geo. IV., c. 16, s. 129, Eng.: it will be found in s. 196 of the Eng. Consol. Act, 1849.

SECTION LXIII.

The substance of this section will be found in 3 & 4 Wm. IV., c. 42, Eng., entitled "an Act for the further amendment of the law and advancement of justice."

Upon all debts or sums certain]—Under 6 Wm. IV., c. 14, s. 68, Ir., (copied from 6 Geo. IV., c. 16, s. 57, Eng.,) legal interest was allowed on Bills of Exchange or Promissory Notes overdue at the issuing of the Commission, to be calculated by the Commissioner to the date of the Commission. This section goes many steps farther, by allowing interest upon *all debts* or sums time, or otherwise, the Creditors shall be entitled to prove for interest, to be calculated to the date of the Commission of Bankruptcy, at a rate not exceeding the current rate of interest, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or, if payable otherwise, than from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment.

Duplicate Copy of Schedule.

LXIV. And be it enacted, That at least eight days before the day appointed for the final examination of any Bankrupt he shall, in addition to the copy of his Schedule which he shall have furnished to the assignee, furnish to and deposit with the registrars of the Court of Bankruptcy a duplicate copy of said schedule;

(The verbal differences are within brackets.)

sec. of Geo. 4, *only related to* "*bills or notes.*"

There is no corresponding enactment, but see note to this section.

certain, whereupon interest was not reserved or agreed for. How far this provision be equitable with respect to other Creditors, or to the estate generally, may well be questioned. It is new in Bankruptcy, both in England and Ireland, and will be found now in the 180th section of the English Consol. Act, 1849.—See Introduction, page 11, *supra.*

At a certain time or otherwise.]—The introduction of the word 'otherwise,' obviates the inconvenience felt by the Rule in Bankruptcy, differing from the Rule in Equity, allowing interest on Bills or Notes *payable on demand, or on a day certain*, to be calculated from the demand or the day.—*Lowndes* v. *Collins*, 17 Ves. 27 ; Ex p. *Cock*, 1 V. & B. 342 ; Ex p. *Cocks*, 1 Rose, 317 ; and see 1 De G. B. L. 288.

Interest.]—Before the passing of 6 Geo. IV., cap. 16, Eng., interest was not proveable in England upon Bills or Promissory Notes.—Ex p. *Marlan*, 1 Atk. 150 ; Ex p. *Greenaway*, 1 Buck. 412 ; see 3 Crabb. Ind. 184 (n), and see De Gex, 288, citing same cases.

SECTION LXIV.

There are some sections in this statute, of which the present is one, that make matters the objects of legislation which hitherto had been accomplished by General Rules and Orders of the Lord Chancellor of England, in pursuance of the power vested in him by the several statutes; for instance, a provision, although not made in the statute, was found necessary, respecting the filing of the Bankrupt's balance sheet in duplicate with the deputy-registrar of the Court, ten days at least before the day appointed for his last examination. This was effected by Rule 14 of Lord Lyndhurst's General Rules and Orders, dated November 12, 1842, and this Rule or Order seems to have laid the ground-work for the above section. Generally speaking, the word "balance-sheet" refers to a kind of abstract or summary of the different accounts contained in what is

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

There is no corresponding enactment, but see 2 & 3 Wm. 4, cap. 114, ss. 1, 2, 3, 4, Eng. *where provision is made for the due recording of proceedings before the Court under an officer appointed for that purpose, (see note.)*

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and such copy shall be produced by the said registrars, at such time and place as the said Commissioners shall by any general rule or order direct, to any person applying for liberty to peruse same, and paying to the said registrars for such liberty a fee of one shilling.

File of Proceedings left with Registrar.

LXV. And be it enacted, That when and so soon as the proceedings under any Commission shall cease, whether by a final dividend being struck, or the Commission being superseded, or otherwise, the assignees and agent to such Commission, or such of them as shall have the custody of the same, shall thereupon deposit with the registrars of the said Court of Bankruptcy the file of proceedings under such Commission, and such file shall from time to time thereafter be produced for inspection or perusal to said assignees and agent, or to such other person only as the said Commissioners or Commissioner shall order or direct; and for every such production thereof the said registrars shall be entitled to a fee of one shilling; and said registrars and each of them shall be responsible for the safe keeping of all files so deposited with them.

technically called the Bankrupt's schedule, which comprises a list of debts due by the Bankrupt—due to the Bankrupt—an account of his moveable chattels; annuities; investments in securities; shares in public companies; fees, pensions, &c.

SECTION LXV.

The entering of record of all depositions, proceedings, or other matters relating to Commissions of Bankrupt became the object of greater care by the legislature, by the 2 & 3 Wm. IV., c. 114, Eng. which provided for the appointment of such proceedings as of record in the Court of Bankruptcy, and in the nomination and appointment by the Lord Chancellor, of a fit person as the Clerk of Enrolment, under whose care and custody all matters were to remain, upon payment of certain fees. Prior to the passing of this act, such matters were only entered of record by petition through the Lord Chancellor, who directed a proper person appointed by him to enter the matters of record accordingly.

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	(The verbal differences are within brackets.)
Registrars, during good behaviour. LXVI. And be it enacted, That the registrars of the Court of Bankruptcy, and their successors, who shall be from time to time appointed by the Lord Chancellor as a vacancy shall arise, shall continue in their respective offices so long as they shall respectively behave themselves well, and shall not be removed, except by writing under the hand of the Lord Chancellor, on sufficient cause therein specified.	*No corresponding section.* *In England the appointment of Registrar and Deputy Registrars vested in the Crown, by* 1 & 2 W. 4, c. 56, s. 9, Eng.
Mortgagees may bid, at sale. LXVII. And be it enacted, That the said Commissioners or Commissioner of Bankrupt may, in their or his discretion, permit any mortgagee to bid at any sale of the mortgaged premises which shall take place before the said Commissioners or Commissioner.	*No corresponding section.*
Goods under seizure by virtue of Attachments. LXVIII. And be it enacted, That all goods and chattels of any Bankrupt which shall at	*No corresponding section.*

SECTION LXVI.

The appointment of a Registrar in Dublin, with a salary not exceeding £300 *per annum*, vests in the Lord Chancellor of Ireland, under 6 Wm. IV., c. 14, s. 88, Ir., and the same section conferred upon the Chancellor an unconditional power of removal, as well as appointment of a successor.

The present enactment confirms him in his office during good behaviour, and if removed for cause, same must be specified in writing by the Chancellor.

SECTION LXVII.

Hitherto, where a mortgagee wished to bid at the sale as a purchaser of the property mortgaged, he applied by petition for leave so to do.—Ex p. *Ducane*, Buck. 18; Ex p. *March*, 1 Mad. 148. At the same time its necessity was doubted.—Ex p. *Hammond*, Buck. 467: and see Sugden's Law of V. & P. 572. It was, however, the more usual, as well as the more prudent course.—Ex p. *Ashley*, 3 Dea. & C. 510.

In Ireland it was always done by petition to the Chancellor, a process now rendered unnecessary

SECTION LXVIII.

This section is only applicable to cases wherein the goods of a trader are within the city boundaries of certain cities in Ireland.—See Introduction, p. 12.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

5 & 6 Vic. c. 122, § 67, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic., c. 106, Eng., *re-enacted* s. 243 *of same*, from 11 Oct. 1849.

[1] [the Court of Review, or before either of the subdivision Courts of Bankruptcy, or any Commissioner, or the Master, or any Registrar or Deputy Registrar of the Court of Bankruptcy, or Master in Ordinary or Extraordinary of the High Court of Chancery, or in Scotland or Ireland]

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the date and issuing of the Commission against him be under seizure by virtue of any attachment shall, upon demand, be delivered up by all persons having the custody of same to any person appointed by said Commissioners or either of them, or to the assignee or assignees of the Bankrupt's estate.

Affidavits, before whom made.

LXIX. And be it enacted, That all affidavits to be made or used in matters of Bankruptcy, or under or by virtue of any statute relating to Bankrupts, or of this Act, shall and may be sworn before [the Commissioners of Bankrupt, or one of them, or before either of the registrars of the Court of Bankruptcy in Ireland, or before any Master in Ordinary of the High Court of Chancery in Ireland, or before the examiner of any such Master in Ordinary, or before any Master Extraordinary of the High Court of Chancery in Ireland, or, in England or Scotland, before any Commissioner appointed by the Court of Chancery in Ireland for taking affidavits in England or Scotland or any part thereof, or][1] before a magistrate of the county, city, town, or place where any such affidavit shall be sworn, or elsewhere before a magistrate, and attested by a notary, or before a British minister, consul, or vice consul.

SECTION LXIX.

All Affidavits.]—The act 8 & 9 Vic., c. 48, which provides for administering a declaration instead of an oath in bankruptcy, does not apply to this country. There is nothing in the act to shew that a Commission of Bankruptcy, which is the proceeding in use here, is intended to be included in the word "fiat," (per Brady, Ld. Ch., in re *Hickey*, 10, Ir. Eq. R., 437.) In *Dunn* v. *the Queen*, 18 L. J. R., N. S., pp. 41, 48, it was laid down by the full Court of Queen's Bench, that an affidavit of debt might still be made under the 1 & 2 Vic., c. 110, s. 8, Eng., as the 5 & 6 Vic., c. 122, s. 11, Eng., by which other provisions were made for similar affidavits, was not necessarily inconsistent with the previous statute. Such affidavit was an affidavit by virtue of a

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Rules may be made under this Act.

LXX. And be it enacted, That it shall be lawful for the Commissioners [of Bankrupt, acting together,][1] to make from time to time, subject to the sanction and confirmation of the Lord Chancellor, general rules and orders for regulating the forms of proceedings (where not provided for by this act) and the practice to be observed [in the Prosecution of Commissions of Bankrupt or other proceedings under this act, and from time to time to amend and vary the same, subject to such sanction and confirmation.][2]

Warrants to be under hand and seal.—Summons under hand of Commissioner.

LXXI. And be it enacted, That every warrant issued by any [Commissioner][1] authorized to act in the prosecution of [any Commission of Bankrupt][2] shall be under the hand and seal of one of the Commissioners acting in the prosecution of [such Commission][3] and every summons issued by any such [Commissioner][1] shall be in writing under the hand of one of such Commissioners.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

Same Act, § 70, *re-enacted in substance*, § 8 *of same.*

[1] [of the Court of Bankruptcy authorized to act in the prosecution of Fiats in Bankruptcy in London, or the major part of them, and such of the Commissioners to be appointed under this act, as shall be nominated by the Lord Chancellor for that purpose,]

[2] [in every court authorized to act in the prosecution of Fiats in Bankruptcy.]

Same Act, § 79, *re-enacted in substance*, § 24 of same.

[1] [Court]

[2] [Fiats in Bankruptcy]

[3] [Fiats in Bankruptcy in such Court]

statute relating to Bankrupts and perjury might be assigned thereon, although under 1 & 2 Vic., c. 110, s. 8, Eng., there was no power of making the person a Bankrupt. The above section of 1 & 2 Vic., as well as the above section of 5 & 6 Vic., so far resemble ss. 11 & 24 of this act as to render the above decision applicable thereto; and see note to s. 24.

SECTION LXX.

In pursuance of this power, 40 Rules have been framed, dated 1st Nov., 1849, intituled "Rules and Orders relating to Official Assignees in Ireland," which are given in full, *infra.*

SECTION LXXI.

Warrant.]—For Forms of warrants of committal of Bankrupt or other person for unsatisfactory answering or refusing to sign examination, see schedule E to this act. For refusing to be sworn or to answer, schedule F. For disturbing Court, schedule G. Search warrant, schedule H: and see observations thereon in note to s. 42, *supra.*

Summons.]—How served when persons are keeping out of the way, see next section; and when Commissioner not empowered to grant substitution, p. 58, and note to section 14, p. 95, *supra.*

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

5 & 6 Vic. c. 122, § 80, Eng., comg. 11 Nov. 1842; *Rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 121 *of same, from* 11 Oct. 1849.

[1] [Court]

[2] [Fiat in Bankruptcy]

[3] [by which a summons]

[4] *The words in italics are not in the corresponding section.*

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How Summons served, when parties are keeping out of the way.

LXXII. And be it enacted, That if in any case it shall be shown by affidavit, to the satisfaction of the [Commissioners or Commissioner][1] authorized to act in the prosecution of any [Commission of Bankrupt][2] [by whom, or one of them, any notice, order, or summons][3] shall have been issued, that the party to whom such summons is directed, is keeping out of the way, and cannot be personally served with such *notice, order, or*[4] summons and that due pains have been taken to effect such personal service, it shall be lawful for such [Commissioners or Commissioner][1] to order, by indorsement upon such *notice, order, or*[4] summons that the delivery of a copy of such *notice, order, or*[4] summons to the wife or servant or some adult inmate of the house or family of the party at his usual or last known place of abode or business, and explaining the purport thereof to such wife, servant, or inmate, shall be equivalent to personal service; and in every such case the service of such *notice, order, or*[4] summons in pursuance of such order shall be and be deemed and taken to be of the same force and effect to all intents and purposes as if a copy of such *notice, order, or*[4] summons had been delivered to the party in person.

SECTION LXXII.

By whom, &c., any Notice, Order, or Summons shall have issued.]—It is plain that the Commissioner must qualify for this power of allowing substitution in one particular mode, viz., by having been the Commissioner authorized to act in the Commission. It is submitted that the issuing of a Commission must therefore be a condition precedent to the power of allowing substitution of service, and therefore that this section is not applicable to the summons under s. 11, which is prior to issuing a Commission, or even to the trader committing an Act of Bankruptcy.—See page 59, *supra*.

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Punishment for Perjury.

LXXIII. And be it enacted, That any Bankrupt or other person who shall upon any examination upon oath or affirmation before the [Commissioners or Commissioner][1] authorised to act in the prosecution of any [Commission of Bankrupt][2] or in any affidavit or deposition or solemn affirmation authorized or directed by this or any other act relating to Bankrupts, wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury.

Forfeitures, how recovered.

LXXIV. And be it enacted, That all sums of money forfeited under this act, or by virtue of any conviction for perjury committed in any oath hereby directed or authorized, may be sued for by the assignees of the estate and effects of any bankrupt in any of her majesty's superior courts of record; and the money so recovered (the charges of suit being deducted) shall be divided among the Creditors.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

Same act, § 81, *re-enacted in substance* § 254 *of same.*

[1] [Court]

[2] [Fiat in Bankruptcy]

Same act, § 82, *re-enacted in substance* § 275 *of same.*

Same verbatim.

SECTION LXXIV.

Under this Act.]—Although this section runs *verbatim* with the corresponding section in margin above, yet it is not *verbatim* with 6 Wm. IV., c. 14, s. 118, its predecessor which is still subsisting and not repealed. It will be observed that the provision for receiving forfeitures under this section applies entirely to such as are under this act, and any others in matters of Bankruptcy, must be under 6 Wm. IV., as above. In the case of the present act the forfeiture may be sued for by the assignees of the estate and effects of any Bankrupt in any of her Majesty's *superior* Courts of Record. In 6 Wm. IV., c. 14, s. 118, forfeitures under that act, &c., are to be sued for by the assignees in any of her Majesty's Courts of Record; the word "superior" not being therein, and no official assignees then existing, it is conceived the operation of that section is confined to the assignees under that act, including the provisional assignee under sec. 55.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

No section corresponding precisely, but see 6 W. IV., c. 14, s. 31, Ir., *latter portion thereof, same as* 6 Geo. IV., c. 16, s. 14, Eng. *rep. by* 12 & 13 Vic., c. 106, Eng., *from* 11*th Oct.*, 1849; *and see note to this sec.*

5 & 6 Vict., c. 122, sec. 83, Eng., *rep. by* 12 & 13 Vict., c. 106, *not specially re-enacted, but see* § 37 *thereof, directing the fees, costs, charges,*

[1] [or Bankrupt]

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Attornies' Bills of Costs.

LXXV. And be it enacted, That all bills of fees and disbursements of any solicitor or attorney employed under any Commission of Bankrupt, for business done under such employment, shall be taxed and ascertained by the registrars of the Court of Bankruptcy, or one of them, subject to review of one of the Commissioners of Bankrupt: provided always, that so much of such bills as contain any charge respecting any action at law or suit in equity shall be taxed and ascertained by the proper officer of the court in which such business shall have been transacted.

Bills of Charges, Fees, &c.

LXXVI. And be it enacted, That all bills of charges, fees, and disbursements of any auctioneer, appraiser, broker, valuer, or accountant employed by any assignee or messenger [ ][1]

SECTION LXXV.

For mode of taxation of attornies' bills of costs in England, see Arch. 370 & 371. By 6 Geo. IV., c. 16, s. 14, the petitioning creditor's costs up to the choice of assignees, that is to say the solicitors' and messengers' bills (for these were his only costs) were directed to be ascertained at the meeting for the choice of assignees, and they were required by writing under their hands to direct the assignees to pay such costs out of the first money that should be got in. So far for costs incurred up to the choice of assignees. All law costs for ensuing proceedings, except costs of actions at law or suits in Equity were, if contested, submitted to a Master in Chancery. Sometimes, however, under the general jurisdiction of the Court costs were taxed. As to assignees' costs incurred by them in actions at law or suits in Equity, they were to be taxed by the proper officer of the Court where such actions or suits were prosecuted; all the other costs were either settled or taxed by the Commissioner. In point of practice they were always taxed by the deputy Registrar of the Court, Arch. 371. Where a solicitor had agreed with the petitioning creditor to work the Commission without any expense to him.—Held to be such an abuse of the Great Seal as to preclude the Court from granting taxation to such petitioning creditor, Ex p. *Wilson*; Buck. 306. Where the client admitted that he promised to pay the bills delivered; no taxation ordered, Ex p. *Tredgold*, 7 Jur. 220.

SECTION LXXVI.

The costs payable by the petitioning creditor are the bill of the solicitor suing out the fiat and the bill of the messenger for business done up to choice of assignees, and he is also entitled, as the case may be, to costs incurred in successfully resisting a petition to supersede the fiat (with us a commission), Ex p. *Bottomley*, 5 Mad. 91; or a sum paid to a creditor to render him a competent witness to support same, Ex p. *Forth*, 2 Mon. & A., 381.

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under any [Commission of Bankrupt][2] for business done under such employment, shall be settled by the [registrars of the Court of Bankruptcy, or one of them, subject to review in the same manner as aforesaid relating to bills of solicitors and attorneys,][3] and the amount of the bills so settled, and no more, shall be paid to or recoverable by such auctioneer, appraiser, broker, valuer, or accountant.

Removal of Assignees.

LXXVII. And be it enacted, That it shall be lawful for the Commissioners of Bankrupt, or one of them, when he or they shall think fit so to do, upon the application of any creditor, to appoint a public sitting, by notice in the Dublin Gazette requiring the creditors to attend and vote as to the removal or continuance of any assignee of the Bankrupt's estate and effects previously chosen by the Creditors; and at the sittings so appointed, or any adjournment thereof, all the Creditors who have proved

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

disbursements, &c. to be taxed by the Master, from 11 Oct. 1849.

[2] [Fiat in Bankruptcy]

[3] [Court authorized to act in the prosecution of such Fiat,]

No corresponding section.

The mode of voting herein is similar to that given under 6 W. IV., c. 14, s. 72, Ir., *same as* 6 Geo. IV., c. 16, s. 61, Eng., *and only differs in the application of its object; the former being for the purpose of* appointing *an assignee, where none was in existence, and the present* (s. 77) *being for the purpose of* removing *an assignee, and choosing a successor.*

SECTION LXXVII.

As to the removal or continuance of any Assignee.]—In England the Court of Review had a statutable jurisdiction under 1 & 2 Wm. IV., c. 56, s. 86, Eng., of removing assignees, which was final and not subject to appeal before the Chancellor. At that time all the power the Commissioners had respecting their appointment was a *veto;* see 6 Geo. IV., c. 16, s. 61, Eng., *(now Rep.)* and up to the passing of this act the Commissioner in Ireland had the same power and no more under 6 Wm. IV., c. 14, s. 72, Ir., which see, and see also p. 73, *supra,* as to their rights and duties. The mode of removing him hitherto was by an application to the Chancellor in the first instance.

This section is new, and it is believed there is no section corresponding with it in any of the English acts: but its origin is sound. The duties of a paid Official Assignee are so distinctly laid down, so precise, and from his public and permanent position as an officer of the Court, so completely under the controul of authority, that the Creditor's assignee seems perfectly unnecessary, and in many instances, a useless incumbrance to the proceedings. His being *chosen* by the creditors (often at the loss of an expensive contest) invests him with a theoretical importance of *representative.* There is no representative in other cases between plaintiffs and defendants before a judge, (or judge and jury, as the case may be) but the attorney or solicitor of the parties, and justice is attained as well, notwithstanding. It is suggested that all the uses of a former assignee are now best centered in the Official, and the sooner we depart from the old cumbrous system the better the Bankrupt and his Creditors will work their cases and find their interests served. A neutral party is what is wanting and no more.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

No corresponding section.

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debts under the Commission to the amount of ten pounds or upwards shall be entitled to vote, and also any person authorized by letter of attorney from any such Creditor or Creditors, upon proof, by an affidavit duly sworn, of the execution thereof; and in case the major part in value of the said Creditors present at such sitting vote for the removal of such assignee, the said Commissioners, or one of them, shall have power to remove such assignee, and to proceed to the choice and appointment of a new assignee or assignees in the room and stead of the assignee or assignees so removed, in like manner as if such assignee had been removed by order of the Lord Chancellor.

Estates, real and personal, to vest in the new Assignee.

LXXVIII. And be it enacted, That all such and the like rights and powers, all such real and personal estate, as are by a certain act passed in the sixth year of the reign of his late majesty king William the Fourth, intituled an act to amend the laws relating to Bankrupts in Ireland, given to or declared to vest in a new assignee appointed in the stead of any removed assignee, shall by virtue of such choice and appointment as aforesaid, and without any deed

SECTION LXXVIII.

By reference to pp. 71 & 72, *supra*, the necessity for this provision will appear obvious, especially when compared with the foregoing section (s. 76.)

All such rights and powers, &c., by a certain act passed, &c.]—These words refer to 6 Wm. IV., c. 14, ss. 74 & 75, and also ss. 76 & 77. Section 74 vested without any deed of assignment all the present and future *personal* estate of the Bankrupt in the assignee or assignees for the time being, and s. 75 provided for the vesting of same and in the same manner, in a new assignee, when substituted upon the death or removal of the old: section 76, did the like as to *real* estate, wheresoever they might be, without any deed of conveyance, &c., and section 77, the like as to the new or substituted assignee upon death or removal. The two pairs of sections are similar with the difference of phrase necessary to be adopted when assigning personal or conveying real property.

of assignment or conveyance being necessary for that purpose, be possessed, enjoyed, and vested in the new assignee chosen and appointed in the stead of the assignee removed by the said Commissioners, except so far as is otherwise provided by this act; and the person who has been removed from being assignee shall be bound to account as fully, and to obey the orders of the said Commissioners as fully and effectually, and be liable to all the like pains and penalties, as if he still continued assignee.

No abatement of Suits, by Death or Removal.

LXXIX. And be it enacted, that whenever, [upon the death or removal of any assignee,][1] a new assignee [ ][2] shall be chosen and appointed, no action, [suit, or *other proceeding*,[3] at law or][4] in equity, shall be thereby abated, but the Court in which any action, suit, *or proceeding*[3] shall be depending shall and may, upon the suggestion of such death or removal and new [ ][5] choice, allow the name or names of the [ ][6] new assignee or assignees to be substituted in the place of the former, and such action, suit, *or proceeding*[3] shall be prosecuted, *or carried on by or against and*[3] in the name or names of the said new assignee or assignees, in the same manner as if he or they had originally [been a party or parties thereto.][7]

6 Wm. 4, c. 16, s. 81, Ir., *taken from* 6 Geo. 4, c. 16, s. 67, Eng., *Rep. by* 12 & 13 Vic., c. 106, Eng., *re-enacted by sec.* 157 *of same, from* 11*th* *Oct.* 1849.

[1] [an assignee shall die, or]

[2] [or assignees]

[3] *The words in italics are not in the corresponding sections.*

[4] [at law or suit]

[5] [appointment or]

[6] [surviving or]

[7] [commenced the same.]

SECTION LXXIX.

No action, &c., shall be thereby abated.]—The Act 6 Wm. IV., c. 14, s. 81, Ir., (taken from 6 Geo. IV., c. 16, s. 67, Eng.) obviated the inconvenience and expense arising from abatement of actions and suits by the death or removal of assignees. This section extends a like provision in the event of a removal and substitution of a new assignee under the preceding section of this act.

Abated.]—It may here be observed with respect to abatement, that in the short statute of 1 Vic., c. 48, Ir., a provision was made in the concluding section, (13) whereby Commissions no longer abated by the demise of the Crown, or the death, removal, or resignation of a Commissioner, thus virtually repealing that portion of the 35th sec. of Wm. IV., (which see, *infra*, and note at foot) whereby fees were reduced to one half upon the Crown's demise.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

For enactments, in pari materia, *although in strictness not corresponding sections, see* 5 & 6 V. c. 122, s. 19, Eng., *rep., and also* 12 & 13 Vic. c. 106, Eng., §§ 249 & 250.

No corresponding section.

(See note.)

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Costs by Commissioner—when.

LXXX. And be it enacted, that it shall be lawful for the Commissioners of Bankrupt to order when, and by whom, and to whom the costs of any proceedings had or taken in the Court of Bankruptcy, or of any matter therein, or of any proceedings under or in pursuance of any order of the said Commissioners, shall be paid; and the Commissioner may order, if he think fit, that any person or witness apprehended or brought up under any warrant of the Commissioners or either of them shall pay the costs of and incident to apprehending him and bringing him up, and that he be detained in custody till the same shall have been paid, or till he be discharged by order of the said Commissioner or of some other competent court.

Money Orders, how enforced.

LXXXI. And be it enacted, that all orders of the said Commissioners of Bankrupt or either

SECTION LXXX.

When and by whom and to whom the Costs, &c.]—Costs would form too long and varied a subject for a note. This section gives no power to the Commissioner beyond limiting the time when costs must be paid, and deciding what party is to pay, and what party to receive. But it gives no jurisdiction as to the nature or extent of the costs themselves. Under sec. 6, the Commissioner is given a discretion to fix the amount of costs in such particular instance, by ordering a specific sum, and under sec. 18, he may order a trader "*such* costs and charges" as he may "think fit." The following section (81) confers upon his Orders, respecting costs and charges, &c., indirectly all the force of a decree in Chancery. Attorneys' or Solicitors' costs we find are to be taxed by a Registrar under sec. 75, *supra*, and costs of other persons, usually or necessarily employed in mercantile matters, such as auctioneers, accountants, brokers, &c., are to be taxed by the same functionary, under sec. 76, subject always, however, to the review of the Commissioners. Under 6 Wm. IV., c. 14, s. 48, Ir., (which see) the Commissioner is empowered to admeasure the costs to a person summoned therein. And witnesses summoned before him are allowed to demand a tender of their necessary expenses "in the manner as is now by law required upon service of a subpœna in an action at law," which implies the power of the judge in that case of admeasuring and determining the amount.

SECTION LXXXI.

As to orders of the Court whereby sums of money or costs, or expences, may be payable, application to obtain the same was usually although not always by petition to the Court not on

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of them, whereby any sum of money, or any costs, charges, or expenses, shall be payable, shall and may be enforced as if the same were orders of the High Court of Chancery in Ireland by writs sued out of the said Court of Chancery, and returnable therein in such form as writs used to enforce decrees or orders of the said Court of Chancery, or as near thereto as may be, or in such form as the Lord Chancellor shall from time to time think fit to order; and the execution of such writs shall be enforced in such and the same manner as the execution of writs of execution is now enforced, or as near thereto as the circumstances of the cases will admit.

Persons able to give Information, &c. if in Prison.

LXXXII. And be it enacted, that when any person believed capable of giving any information concerning the trading or any act of Bankruptcy committed by the person against whom any Commission is issued, or any person known or suspected to have any of the estate of a

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

6 W. 4, c. 14, § 37, Ir., *same as* 6 Geo. 4, c. 16, § 24, Eng., comg. 1 Sept. 1825, *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 100 *of same, from* 11 Oct., 1849:—"And be it enacted, That it shall and may be lawful for the Commissioner, by writing under his hand, to sum-

motion; sometimes it was a matter of course at the office. Such order in England when served personally, and a demand made therewith, subjected the person disobeying same to committal. See De Gex, 884, citing Ex p. *Dicas*, Mont., 215.

This section has no equivalent in the English acts. The difference in the working of the English and Irish Bankrupt Courts which has been already explained, page 77, *supra*, requires different measures for their accommodation. Under 5 & 6 Vic., c. 122, s. 69, Eng., the subdivision Courts, and also the Courts of Bankruptcy, were "in all matters before such Courts respectively" authorized to award costs, which were recoverable as costs under a Rule of the Superior Courts at Westminster. There being no Courts of that nature in Ireland, it became necessary to confer similar powers on the Commissioner. Under 3 & 4 Vic., c. 105, s. 27, Rules of Court were to have the effect of judgments and executions, when thus had for money orders; and this seems to have been the precedent on which the present section was grounded.

SECTION LXXXII.

The person against whom any Commission is issued.]—This section is not confined to matters *after adjudication*, the above phrase together with the context affording evidence thereof. It will be found a useful auxiliary to 6 Wm. IV., an extract of which is given in the margin above, and of which it is an amendment by extending the jurisdiction of the Commissioners and investing

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

mon before him any person whom he shall believe capable of giving any information concerning the trading, or any Act or Acts of Bankruptcy committed by the person or persons against whom such Commission is issued, and also to require any person so summoned to produce any books, papers," &c.

6 W. 4, c. 14, § 139, Ir., *same as* 6 Geo. 4, c. 16, § 119, Eng., *rep. as above.*

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Bankrupt in his possession, or to be indebted to the Bankrupt, or to be capable of giving information concerning the person, trade, dealing, or estate of a Bankrupt, is in prison or in custody under any process, attachment, execution, commitment, or sentence, the said Commissioners of Bankrupt, or one of them, may, by warrant under their or his hand, directed to the party in whose custody such person is confined, cause such person to be brought before them at any sitting for examination, and such warrant of the said Commissioners, or one of them, shall be lawful authority for bringing up such person.

Bankrupt, if in Prison or Custody.

LXXXIII. And be it enacted, that whenever any Bankrupt is in prison or in custody, *in England, in Scotland, or in Ireland,*[1] under

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[1] *The words in italics are not in the corresponding section.*

them with the further power of bringing before them witnesses who have been in confinement under *process, attachment, execution, commitment, or sentence.* By 11 & 12 Geo. III., c. 8, s. 32, Ir. Rep., the Commissioners of Bankrupt, or the major part of them, were empowered to summon witnesses who they knew or were informed and believed "could give any account or information of any Act of Bankruptcy committed by any person or persons against whom any Commission of Bankruptcy *shall be* awarded and issued out," &c., or of his goods, chattels, estate, or effects, &c., and of committing them by their warrant, upon neglect or refusal, to prison (without bail) until they "submitted to appear and be examined." The 37th section of 6 Wm. IV., c. 14, (by which that act of 11 & 12 Geo. III. was repealed) is *verbatim*, an adoption of the 24th sec. of 6 Geo. IV., c. 16, Eng., which conferred like powers of summoning and examining, or of committing together with the additional power of compelling such witnesses "*to produce books, papers, deeds, writings and other documents*" in their "*possession, custody, or power.*" It also gave a power to summon persons whom they "believed capable of giving any information concerning *the trading* or any act or acts of Bankruptcy committed by the person or persons against whom such commission *is* issued." As the law stands at present in England, as heretofore in Ireland, the Court have no such power as that of ordering prisoners under execution or sentence before them, and the only means left for the creditors or the Bankrupt on such occasions is to apply for a writ of *habeas corpus.* This section obviates the expense and loss of time of such a proceeding.

SECTION LXXXIII.

Whenever any Bankrupt is in prison.]—This must be *after* adjudication. The phrase "surrender," lower down, proves so much. See note to s. 82, as to the power of summoning witnesses. The same observations equally apply to this section, which amends 6 Wm. IV., c. 14, s. 139, Ir., by enabling the Commissioner to exercise the same controul over the person of the Bankrupt although imprisoned under process, attachment, &c., whether it be in England, Scotland, or Ireland, as he possessed in Ireland alone.

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any process, attachment, execution, commitment, or sentence, the [said Commissioners, or one of them,][2] may, by warrant under *their or*[1] his hand, directed to the person in whose custody such Bankrupt is confined, cause such Bankrupt to be brought before [them, or one of them,][3] at any sitting; and if any such Bankrupt is desirous to surrender, he shall be so brought up, and the expense thereof shall be paid out of his estate, and such [warrant of the said Commissioners or Commissioner shall be a lawful authority][4] for bringing up such Bankrupt.

Depositions, &c. entered of Record.

LXXXIV. And be it enacted, That all or any part of any depositions, proceedings, or other matters relating to the Commissions of Bankruptcy shall, with the permission in writ-

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] [Commissioner]

[3] [him]

[4] [person shall be indemnified by the warrant of the Commissioner]

No corresponding section.

And if any Bankrupt is desirous to surrender.]—The immediate object of this member of the section is to give the Bankrupt an opportunity if such should be his choice to apply at an early stage and surrender himself voluntarily even before the time appointed at the cost of the estate.

In England, Scotland, or Ireland.]—There is no power of compelling the attendance of any other than the Bankrupt himself if imprisoned out of Ireland. This is a new power and is an extension of the power of the Bankrupt court in addition to that given for the first time to the Commissioners in Ireland by sections 41, 42, and 43 of 6 Wm. IV., c. 14, whereby they could enable their messenger to break open houses, &c., in England and Scotland, provided they belonged to the Bankrupt.

And such Warrant, &c., shall be lawful authority.]—Nothing can afford more distinct and unequivocal evidence of jurisdiction than that the exhibition of an instrument under the Hand and Seal of a Functionary be declared a sufficient warrant for the removal of a prisoner beyond the jurisdiction of the authority which placed him in confinement.

SECTION LXXXIV.

Under 6 W. IV., c. 14, ss. 109 & 111, no Commission, adjudication, assignee or Bankrupt's certificates, were receivable in evidence in a court of law or equity, unless entered of record under that act. These instruments were entered of record, and the certificate of entry endorsed upon them, on the mere application of the party interested, and on paying the usual office fees. It was done "without any petition or writing, presented for that purpose." Sec. 111 above.

The same section went on then, to enable the Chancellor, "upon petition," to direct "depositions, proceedings, or other matters relating to Commissions of Bankruptcy to be entered of record" in like manner. After which, there was a provision for making all equally evidence without any proof of the officer's signature, &c.

The object of this section is, to substitute the permission in writing of the Commissioner, for the leave of the Chancellor, granted after the tedious and expensive process of petitioning, thus saving the estate from unnecessary costs.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

* *sic.*

6 Geo. IV., c. 16, § 17, Eng., *rep.* by 12 & 13 Vic., c. 106, Eng., re-enacted, § 98, of same, from 11 Oct., 1849.

[1] [two]

[2] [such other Commission or Commissions shall be directed to the Commissioners to whom the first Commission was directed, and]

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ing of the said Commissioners of Bankrupt, or one of them, upon the application or behalf of any person interested therein, and on payment of such fees as before the passing of this act were by law payable for the like business, without any petition presented for that purpose, and without any order of the Lord Chancellor, be entered of record in like manner as same have hitherto been entered of record upon an order of the Lord Chancellor made in that behalf; and on the production in evidence of any instrument so entered of record, having a certificate thereon purporting to be signed by the person heretofore appointed to enter such and the like proceedings, or by his deputy, or *their successors, the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid; and the fee of one shilling, and no more, shall be payable to the person so appointed as aforesaid, and his successors, for every search made for matter so entered of record as aforesaid.

Where Second Commission against Partners.

LXXXV. And be it enacted, That if, after a Commission issued against [one][1] or more members of a firm, any other Commission or Commissions shall be issued against any other member or members of such firm [ ][2] immediately after the adjudication under such other Commission or Commissions [all the

SECTION LXXXV.

This is an amendment of 6 W. IV., c. 14, s. 34, Ir. By substituting the words "one or more," in lieu of the words "two or more;"—with this exception the sections are *verbatim*. The section of 6 Geo. IV., in the margin is the corresponding English section from which that of 6 Wm. IV. was taken. The verbal differences are given herewith in order to enable the reader to apply any decision of the English Bankrupt Court if such there should happen to be.

estate, real and personal, of such person or persons declared bankrupt under such other Commission or Commissions, shall become vested in and transferred to the assignees under the first Commission or Commissions, in the same manner as if they had been appointed assignees under such other Commission or Commissions, according to the provisions of this act or any other act in force concerning Bankrupts,][3] and all separate proceedings under such other Commission or Commissions shall be stayed, and such *other*[4] Commission or Commissions shall, without affecting the validity of the first Commission, be annexed to and form part of the same: Provided always, that the Lord Chancellor may direct [such][5] other Commission or Commissions *to*[4] be [proceeded on][6] either separately or in conjunction with the first Commission.

Composition after Adjudication. Three-fifths of Creditors.

LXXXVI. And be it enacted, That at any meeting of Creditors, after the [Schedule of a Bankrupt shall have been furnished, and placed on the file of proceedings,][1] [of which meeting,][2] and of the purport of which, [notice shall be

(*The verbal differences are within brackets.*)

[3] [the Commissioners shall convey and assign all the estate real and personal of such Bankrupt or Bankrupts, to the assignee chosen in the first Commission, and after such conveyance]

[4] *The words in italics are not in the corresponding section.*

[5] [that such]

[6] [issued to any other Commissioners or that such other Commissioner or Commissioners shall proceed]

S. 85 *in text with the exception of the word* "one" *for* "two," *is verbatim with* 6 W. 4, c. 14, § 34, Ir. *taken from* 6 Geo. 4, *in margin.*

Same Act, § 133, *re-enacted in substance* § 230 *of same.*

[1] [Bankrupt shall have passed his last examination]

[2] [whereof]

SECTION LXXXVI.

Under the above section of Wm. IV., although a composition could have been effected with the consent of nine-tenths of the creditors, yet it was left in ambiguity how far such provision extended over those creditors who had not proved under the Commission. The above s. 230 of the Consol. Act concludes with the following provision, which is an improvement on that of 6 Wm. IV.: "And every Creditor of such Bankrupt shall be bound to accept of such composition so agreed to." Notwithstanding the provision in Wm. IV., much doubt was entertained as to its perfect value in providing against the contingency of future claims; and these doubts were considerably increased by reading the case of *Tuck* v. *Tuck*, for which see note at foot of sec. 89, *infra.*

After the Schedule, &c., furnished and placed on the file.]—This leaves an opportunity to the Bankrupt or his friends to make an early settlement, as he can do so now, immediately after adjudication. Under the corresponding sections above, he was compelled to wait until he passed his final examination, and is still so compelled in England under s. 230 of the Consol. Act, 1849.

CORRESPOND NG ENACTMENTS.

(The verbal differences are within brackets.)

[3] [twenty-one days' notice shall be given in the London Gazette]

[4] [nine-tenths]

[5] *The words in italics are not in the corresponding section.*

[6] [aforesaid]

The 6 W. 4, c. 14, § 151, Ir., *is the same with the above of* 6 *Geo*. 4, *but concludes with the following provision*:—"and the remaining one-tenth in number and value of the said Creditors shall be bound to accept of such composition so agreed to."

6 Geo. 4, c. 16, s. 134, Eng., *Rep. by* 12 & 13 Vic. c. 106. Eng., *re-enacted by* § 231 *of same, from* 11 Oct. 1849.

[1] [and any Creditor to the amount of £50 and upwards, residing out of England, shall be personally served with a copy of the notice of the meeting, to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long, before such meeting, as that he may have time to vote thereat; and such Creditor shall be entitled to vote by letter of attorney, executed and attested in manner hereby required for such Creditors voting in the choice of Assignees]

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given as herein-after directed,][3] if the Bankrupt or his friends shall make an offer of composition or security for such composition, which [three-fifths][4] in number and value of the creditors assembled at such meeting (*personally or by some person authorized to vote by letter of attorney*), *and who shall have proved a debt amounting to at least twenty pounds*[5] shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as [is herein-after directed][6] shall be given; and if at such second meeting [three fifths][4] in number and value of the Creditors then present, *or represented by attorney, and who have proved debts as aforesaid*,[5] shall also agree to accept such offer, the Lord Chancellor shall and may (upon such acceptance being testified by them in writing, *and the acceptance thereof, and that notice of each of such meetings was duly given, certified by the said Commissioners of Bankrupt or one of them*,)[5] supersede the said Commission.

Notice of Voting, as to Composition.

LXXXVII. And be it enacted, That in deciding upon such offer as aforesaid any Creditor whose debt is below twenty pounds shall not be reckoned in number, but the debt due to such Creditor shall be computed in value; [ ][1] and if any Creditor shall agree to accept any gratuity or higher composition for assenting to such offer he shall forfeit the debt due to him, together with such gratuity

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Or by some person authorized, &c., by letter of Attorney.]—This enables absent creditors to vote.

Three fifths.]—It had been "nine-tenths" under the corresponding sections above and still so remains in s. 230 of the Consol. Act, above quoted.

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or composition; and the Bankrupt shall (if thereto required) make oath. before the Commissioner that there has been no such transaction between him, or any person with his privity, and any of the Creditors, and that he has not used any undue means or influence with any of them to obtain such assent as aforesaid.

Notice to Composition Creditors.

LXXXVIII. And be it enacted, That notice of each of such meetings shall be inserted in the Dublin Gazette twenty-one days before the day of meeting; and a copy of such notice shall be served twenty-one days at least before the day of meeting upon every Schedule Creditor, as well as upon every Creditor who has proved a debt, and who shall be resident in Dublin or within ten miles thereof, or whose debt shall amount to one hundred pounds or upwards, wheresoever resident; and notice to every Creditor whose debt shall not amount to one hundred pounds, and who shall not be resident in Dublin or within ten miles thereof, shall be given by advertisement in the Dublin Gazette as aforesaid, and by sending, addressed to every such last-mentioned Creditor, by the General Post, pre-paid, a true copy of each such notice, twenty-three days at least before the day appointed for such meeting, the address and delivery of which copies respectively at the

Corresponding Enactments.

(*The verbal differences are within brackets.*)

(*The* 6 W. 4, c. 14, § 154, Ir., *same as the above, reading* "Ireland" *for* "England."

The plan and substance of this section is copied from Rule 8 *of the General Orders of the Court for Relief of Insolvent Debtors in Ireland, under* 3 & 4 Vic. *c.* 107,
2 Nov. 1840.

SECTION LXXXVIII.

The plan as well as the substance of this section is copied from Rule 8 of the General Orders of the Court for the Relief of Insolvent Debtors in Ireland, under 3 & 4 Vic., c. 107, Ir. The Rules bear date, 2nd Nov., 1840, and have since been found to work well. There are other instances wherein Rules have been usefully and safely converted into sections of statutes, which have turned out beneficial in practice.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

6 Wm. 4, c. 14, s. 151, Ir., *(concluding provision thereof)*: "and the remaining one-tenth in number and value of the said Creditors shall be bound to accept of such composition so agreed to."

12 & 13 Vic. c. 106, *s.* 230, Eng., *com.* 11 Oct. 1849, *(concluding provision thereof)*: "and every Creditor of such Bankrupt shall be bound to accept of such composition so agreed to."

[1] *The words in italics are not in the corresponding clause of* 230.

[2] [of such]

7 & 8 Vic. c. 70 § 1 Eng., *comg.* 1 *Sept.* 1844.

[1] *The words in italics are not in the corresponding section.*

[2] [expedient that trust deeds and other amicable modes of]

[3] [should be facilitated and that better means should be provided for carrying the same into effect]

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Post Office into which the same respectively shall be put being verified by the affidavit of an attorney of one of her Majesty's Courts of Law at Dublin, and the name and address of the attorney sending the same being inserted at foot of every such copy.

Schedule Creditors bound after Notice.

LXXXIX. And be it enacted, That every Creditor *named in the Schedule*[1] [of the][2] Bankrupt *(to whom notice of each of such meetings shall have been given in manner herein-before provided,) and whether he shall or shall not have proved his debt under the Commission,*[1] shall be bound to accept of such composition so agreed to.

Arrangements between Debtors and Creditors.

XC. *And*[1] whereas it is [desirable to facilitate][2] arrangements between Debtors and their Creditors [ ]:[3] be it enacted, [That][4] any Debtor [ ][5] unable to meet his engagements with his Creditors [ ],[6] *and unable to obtain the consent of the whole of his Creditors to any*

SECTION LXXXIX.

This section obviates the evil adverted to in the note to s. 86 above, and provides that all creditors whether they have proved or not, shall be henceforth bound. Two other clauses of like purport are set out in margin. The value of such a provision will be manifest on reading the following case: To an action on a bond, the substance of the 133rd section above was pleaded, and the superseding of the Commission, &c., and willingness at all times to pay such composition, &c., but the plea did not set out that the plaintiffs attended at said meeting for composition, &c., nor that they had ever proved under the Commission—held no answer to the action. Per Lord Tenterden, C. J.—"All that the 133rd section enacts is, that when a certain proportion of the creditors agree to take a composition, the Lord Chancellor may supersede the Commission. It does not at all interfere with the rights or securities of persons not parties to the agreement."—*Tuck* v. *Tuck*, 9 B. & C., 437. This decision, however, was come to on a section which did not contain the provision in 6 Wm. IV., in margin. Still it tended to leave a doubt on the mind of cautious persons.

SECTION XC.

This section has been noticed in the Introduction, at pp. 8 and 14. It has a common purpose with the 17 following sections, and a preamble affixed declaratory of that purpose—namely, the facilitating of "arrangements between debtors and their creditors." There may arise some doubt

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deed of composition, may,[1] with the concurrence of [two-thirds][7] in number and value of his Creditors (testified by their signing his petition) [ ],[8] present a petition to the [said Commissioners of Bankrupt],[9] setting forth a full account of his debts, and the consideration thereof, and the names, residences, and occupations of his Creditors, and also a full account of his estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property, of what kind soever, held in trust for him, and also setting forth that he is unable to meet his engagements with his Creditors, and the true cause of such inability, *and that he is unable to obtain the consent of all his Creditors to a composition,*[1] and setting forth such

Corresponding Enactments.

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding section.*

[4] [By the Queen's, &c. &c., that from and after the first day of September next after the passing of this act it shall be lawful for]

[5] [who is]

[6] [such debtor not being a trader within the meaning of the statutes now in force relating to Bankrupts]

[7] [one-third]

[8] [to]

[9] [Court of Bankruptcy]

as to the interpretation to be given to the word "debtors," that is, as to whether or not it be controlled by the General Preamble of the Act itself, which first sets out with simply declaring that "it is expedient to amend the Law of Bankruptcy," and then goes on to recite the act of his late Majesty, entitled *an act to amend the laws relating to Bankrupts in Ireland*, and that it is "adviseable to *extend the provisions* and regulations contained" therein, meaning 6 Wm. IV., c. 14, Ir. It then pursues the same course, section for section towards that act of Wm. IV., as 5 & 6 Vic., c. 122, adopted towards 6 Geo. IV., of which 6 Wm. IV. was a copy. It enlarges the class of traders liable to the Bankrupt laws, (s. 10) and lowers the amount necessary to constitute a petitioning creditor's debt, (s. 9) and appoints official assignees (s. 28). It constitutes several acts of a trader, hitherto implying insolvency only, into acts of Bankruptcy, and affords the Creditor many legal modes of infallibly testing the traders solvency, never before within his reach (ss. 11 to 18, and ss. 20 to 22). But it also limits the relation back of all acts of Bankruptcy, (s. 7) so as to afford the trader and those engaged with him greater security in their dealings, by confining the relation back to a more defined and limited period than heretofore. It makes the Bankrupt more amenable to the law than he had been before, and gives the Court jurisdiction over his person if likely to absent himself, even before he be adjudged a Bankrupt, (s. 4) at the same time secures to him his certificate of good conduct independent of hostile or of any creditors, (s. 56) and many other measures as well for the benefit of creditors as for the advantage of trade. All this is done by the adoption nearly *verbatim* of provisions subsisting in the English statutes, but more especially in 5 & 6 Vic., c. 122, mentioned above. After copying, and, as it were, exhausting that statute, it then proceeds to adopt another statute—namely, 7 & 8 Vic., c. 70, Eng., as given in the margin above. Of this statute it may be necessary to give a short account, lest the reader fall into a common error, by confounding it with other acts closely resembling it in its provisions; namely, 5 & 6 Vic., c. 116, Eng., and 7 & 8 Vic., c. 96, Eng.

Concurrent with 5 & 6 Vic., c. 122, Eng., (the great Bankrupt Act of England) there passed 5 & 6 Vic., c. 116, Eng., both receiving the Royal Assent on the same day (12th August, 1842). The latter declared it "expedient to protect from process against the person such persons" as had become indebted "without any fraud or gross or culpable negligence, so as nevertheless their estates may be duly distributed among their creditors." The enacting part of the first section then went on to confine its relief to "any person not being a trader within the meaning of the

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proposal as he is able to make for the future payment or the compromise of such debts or engagements, and that [two-thirds][7] in number and value of his Creditors have assented to such proposal, and praying that such proposal (or such modification thereof as by the majority of his creditors [shall][10] be determined)	*(The verbal differences are within brackets.)* [10] [should]

statutes" then in force "relating to bankrupts," thus comprising that portion of the community not relievable by, or amenable to, the 5 & 6 Vic., c. 122, or any other Bankrupt Act. It went farther, however, for it extended its operations to a portion of the class comprised within the provisions of 5 & 6 Vic., c. 122—namely, "any person being such trader, but owing debts amounting in the whole to less than three hundred pounds."

These were persons, it is presumed, who together with their creditors the Legislature supposed would suffer by the tedious and expensive process usually adopted in Courts of Bankruptcy. Under this statute such persons petitioned the Bankrupt Court, giving public notice thereof in the *Gazette*, and in the newspapers circulating near *their usual place of abode*. Meetings were held, similar to Bankruptcy meetings, their estate vested in the official assignee, they were given an allowance, and the remainder of their estate was distributed amongst their creditors, and finally they were allowed protection of their person.

Their future acquired property was under the control of the Court, at least the assignees were restricted from possessing themselves of it without the leave of the Court (s. 9).

Afterwards the 7 & 8 Vic., c. 96, Eng., was passed, amending that act, and cotemporaneously with it, the 7 & 8 Vic., c. 70, Eng.; the latter receiving the Royal Assent on the 6th August, 1844, the former on the 9th (three days later).

There is nothing in 7 & 8 Vic., c. 96, which in any manner disturbed the principle of 5 & 6 Vic. c. 116. It merely amended by going more accurately into details and defining with more precision the duties of all parties, and dispensing with the publicity of advertising as a preliminary to filing the petition.

The 7 & 8 Vic., c. 70, Eng., took up a different position. Its preamble appearing in the margin above need not be repeated here. The person coming under its operation must be a "debtor not being a trader within the meaning of the statutes" *then in force* "relating to Bankrupts." A condition precedent to petitioning the Court for relief was directly set forth in the 1st section—namely, "the concurrence," of a certain portion of Creditors, "testified by their signing his petition," and it would appear a second condition was necessarily implied—namely, "such proposal as he was able to make for the future payment or the compromise of such debts or engagements." He should also shew that he was "unable to meet" those engagements, and state "the true cause" thereof.

(Under the present act a Debtor can be *summoned* by the Commissioner and examined upon oath, (s. 92) and treated therein as Bankrupts are dealt with (s. 104).)

After passing through the several preliminaries of meetings and examinations, &c., precisely similar to those of the Bankrupt, he then obtains a "certificate," which shall "henceforth operate to all intents and purposes as fully as if the same were a certificate of conformity under a Bankruptcy" excepting *only* that no debt excepted from the operation of the act "could be barred by it." The exceptions were the usual ones, such as those arising out of prosecutions for a breach of the revenue laws, breach of promise, seduction, crim. con. libel, slander, &c.

It was thought necessary to give an outline of these statutes in order to assist in the construction of this portion of the present statute.

Any Debtor]—This phrase will be found in no other portions of the act except those provisions having reference to the arrangements herein contained Other portions of the act use "such trader." Section 211 of the Eng. Consol. Act, which is the first of a series of sections similar to these use the words "such trader," and no other. That act does not apply to any but traders subject to the Bankrupt laws.

Present a Petition.]—The Form of Petition will be found in Schedule I. to this act annexed,

12 & 13 Vict., Cap. 107.

[shall][10] be carried into effect under the superintendence and control of the said [Commissioners],[11] and that he [may][12] in the meantime be protected from arrest [ ].[13]

Petition and Affidavit.

XCI. And be it enacted, That every such petition shall be in the form in Schedule (I.), and be filed with the registrars of the said Court of Bankruptcy, and the date of filing shall be endorsed thereon, and there shall be filed therewith an affidavit in the form in Schedule (K.); and on filing of each of such documents there shall be paid to the said registrars a fee of five shillings.

Arrangements between Debtors and their Creditors.

XCII. And be it enacted, That upon the [filing][1] of *any*[2] such petition [the said Commissioners or one of them][3] shall privately examine into the matter [thereof,][4] and for that purpose shall have power to *summon and*[2] examine upon oath such petitioning Debtor, [or][5]

Corresponding Enactments.

(The verbal differences are within brackets.)

[10] [should]
[11] [Court.]
[12] [the said petitioning Debtor should,]
[13] [by order of the said Court]

No corresponding section.

7 & 8 Vic. c. 70, § 2, Eng., com. 1 Sept. 1844; *not rep.* 1849.
[1] [presentation]
[2] *The words in italics are not in the corresponding section.*
[3] [one of the said Commissioners of the said Court in such rotation as by order of the said Court shall be appointed]
[4] [of the said petition]

framed with headed columns, so as to assist the petitioner in formally and accurately detailing the different requirements under the act.

And that he may in the mean time be protected from arrest.]—The power to grant petition is set forth in s. 94, *infra.*

SECTION XCII.

The filing of any such Petition.]—The moment of filing is one of the utmost importance, if filed by any of the class of Traders liable to Bankruptcy. Under sec. 23, *supra*, it (that is the *filing*) is to be "accounted and adjudged conclusive evidence of an act of Bankruptcy" committed "at *the time* of filing," &c., with this limitation, that a commission must issue within two months *after the notice* appears in the *Dublin Gazette*. This notice cannot be filed without the directions of the Commissioner (s. 93, *infra*), when after a private examination "into the matter thereof," (*ibid*), and upon being "satisfied of the truth," &c., (*ibid*) and that his proposal is "reasonable and proper to be executed," &c., he allows the Petition, *de bene esse*, (*ibid.*) and then directs the notice to be advertised in the *Dublin Gazette* (*ibid*). But no Commission can issue "unless and until" after the Petition be "dismissed" (s. 23.)

This act of Bankruptcy is therefore grounded upon a twofold contingency—the act of the Commissioner in dismissing the Petition, and the conduct of the Creditors in issuing forth a Commission. There might, in the instance of small traders, be added a third, namely, the existence of a sufficient debt amongst those Creditors who would be desirous to have a Commission issued.

CORRESPONDING ENACTMENTS.

(The verbal differences are within ackets.)

[2] *The words in italics are not in the corresponding section.*

[5] [and]

[6] [such petitioning debtor]

[7] [such Commissioner]

[8] [suing out a fiat in]

[9] [Court]

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any Creditor concurring in his petition, [or][5] any witness produced by [him][6] *or any person claiming to be a Creditor of such petitioning Debtor, or any other person or persons whom it shall appear advisable to examine,*[2] and if [the Commissioner][7] shall be satisfied of the truth of the several matters alleged in such petition, and that the debts of such petitioning Debtor have not been contracted by reason of any manner of fraud or breach of trust, or without reasonable probability at the time of contract of being able to pay the same, or by reason of any judgment in any prosecution for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious [prosecution of a][8] Bankruptcy, or malicious trespass, and that such petitioning Debtor has made a full disclosure of his debts and credits, estate and effects, and is desirous of making a bonâ fide arrangement with all his Creditors, and that his proposal to that effect is reasonable and proper to be executed under the direction of the said [Commissioners],[9] it shall be lawful for [the said Commissioners, or one of them],[7] *to allow such petition de bene esse, and in such case the said Commissioners or Commissioner shall cause notice of the filing of such petition, and of the allowance thereof de bene esse, to be advertised in the Dublin Gazette, and*][2] to direct that a

To allow such Petition, de bene esse.]—This operates as an adjournment, and prevents the filing of such petition from forming the grounds whereon to sue out a Commission, under s. 28, *supra*, which enacts "that no Commission of Bankruptcy shall issue *unless* and *until after* such Petition for arrangement shall have been dismissed." It must, likewise, under the same section, be issued *within two months* after the filing of the Petition. Thus it is in the discretion of the Commissioner, according to the character and conduct of the Petitioner, to prevent his seeking for relief being converted practically into an Act of Bankruptcy.

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meeting of all the Creditors of such petitioning Debtor shall be held, at such time and place as the said *Commissioners or*[2] Commissioner shall appoint, *and*[2] notice of [such][10] meeting shall be given to every such Creditor not less than [twenty-one][11] days before the same is held, *such notice to be sent or given in manner hereinafter directed.*[2]

How notice given.

XCIII. And be it enacted, That notice of such meeting shall be inserted in the Dublin Gazette twenty-one days before the day of meeting, and a copy of such notice shall be served twenty-one days at least before the day of meeting, upon every Creditor who shall be resident within ten miles of the town or place where the petitioning Debtor last carried on trade or business, or whose debt shall amount to one hundred pounds or upwards, wheresoever resident; and notice to every Creditor whose debt shall not amount to one hundred pounds, and who shall not be resident within ten miles of the place of business of the peti-

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] *The words in italics are not in the corresponding section.*

[10] [which]

[11] [seven, or more than twenty-eight]

No corresponding section.

The framing of this section is similar to that of section 88, *supra, and drawn from the same source and for a like purpose. See Rule* 8 *of the General Orders of the Court for the Relief of Insolvent Debtors in Ireland, under* 3 *&* 4 *Vic., c.* 107, *Ir., Insolv. Act.*

SECTION XCIII.

This provision, as to notice, is similar to that given under s. 88, preceding. It will be seen, in the margin, that it was taken from the Rules of Practice of the Court for Relief of Insolvent Debtors in Ireland.

Last carried on trade or business.]—The nature of the trade or business is not to be collected from any passages in the Act. It may be said that in cases of doubt the Preamble of the Act should help, especially as it is held that the meaning of general words in the enactments of a statute is restrained by the preamble—*Gray* v. *Soames*, 2 Jur. 1040, B. C. Lord Coke says that the preamble is a good means for collecting the intent, and shewing the mischiefs, which the makers of the act intended to remedy.—4 Inst. 330. If the preamble be special and particular, then, without express words in the enacting part, its operation must be confined to the preamble—*Pattison* v. *Berks*, Cow. 543. In that case, however, Lord Mansfield said, there were a variety of cases, where it had been determined, that strong words, in the enacting part of a statute, might extend it beyond the statute. The preamble may, however, assist in construing ambiguous expressions, but cannot controul clear ones.—*The Salters' Co.* v. *Jay*, 3 Q. B. R., 109. Where the preamble was clear and pointed, much weight should be attached to the inference to be drawn from it, but the enacting words might go beyond it, and embrace any other case within a mischief sought to be remedied by it, and if so, effect should be given to them.—*Fellows*

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

No corresponding section.

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tioning Debtor, shall be given by advertisement in the Dublin Gazette as aforesaid, and by sending, addressed to every such last-mentioned Creditor, by the general post, pre-paid, a true copy of each such notice, twenty-three days at least before the day appointed for such meeting, the address and delivery of which copies respectively at the post-office into which the same respectively shall be put, being verified by the affidavit of an attorney of one of her Majesty's Courts of Law at Dublin, and the name and address of the attorney sending the same being inserted at foot of every such copy.

Commissioner to examine into the matter.

XCIV. And be it enacted, That the said Commissioners, or one of them, both during the examination into the matter of the petition and after the allowance thereof de bene esse, shall have power to grant such petitioning debtor protection from arrest for such time as

v. *Clay*, 4 Ad. & El. 378. Yet as to context, it was held, that if any part of a statute be obscure, and other passages in the same act will elucidate the obscurity, recourse might be had to such context for that purpose.—*Rex* v. *Palmer*, 1 Leach, C. C. 352, 355; 2 East, P. C. 898.

Where a general intention is expressed, and the act also expresses a particular intention, incompatible with the general intention, such particular intention is to be considered in the nature of an exception; see Dwar. 514, citing *Churchill* v. *Crease*, 5 Bing., 180, referred to in *Torrington* v. *Hargreaves*, ib. 492–3. The enacting part was not restrained by the preamble, *Mace* v. *Cadell*, Cow. 238. It had been questioned if the enacting part of the statute of James went farther than the preamble—if it did not, said Lord Mansfield, it would be strange, ib. Lofft, 784. Per Lord Tenderden.—In construing Acts of Parliament, we are not only to look at the language of the preamble, or of any particular clause, but at the language of the whole act. And if we find in the preamble, or in any particular clause, an expression not so large and extensive in its import as those used in other parts of the act, and upon a view of the whole act, we can collect from the more large and extensive expressions used in other parts of the act, the real intentions of the legislature, it is our duty to give effect to the large expressions, notwithstanding the phrases of less extensive import in the preamble, or in any particular clause; *Doe d. Bywater*, v. *Bradling*, 7 B. & C., 660. Lord Abinger laid it down as a general rule, that a preamble *may extend* but *cannot restrain* the effect of a particular clause; *Walker* v. *Richardson*, 2 Mee & W., 889.

SECTION XCIV.

Protection from Arrest.]—This is but a temporary protection, and may be renewed from time to time, a power which did not exist under the corresponding act. See next section. It will not be of avail in certain instances of misconduct. See section 100, *infra*, and notes thereto.

the said Commissioners or Commissioner shall think fit; and if it shall appear to the said Commissioners or Commissioner, on such examination into the matter of the petition, or at any time before the confirmation by the said Commissioners or Commissioner of the resolution of Creditors, as herein-after provided, that such petition is within any of the terms of disqualification above mentioned, or if the proposal of the petitioner, or some modification thereof, be not agreed to by the required number of Creditors at the meetings, and in manner herein provided and approved of, and confirmed by the said Commissioners, or one of them, such petition shall be dismissed, and any protection granted to the petitioner shall thereby cease and determine.

Protection—Release from Prison.

XCV. And be it enacted, That the said Commissioners or Commissioner may renew such protection from time to time as they or either of them shall think fit, and if the petitioning Debtor be in prison or in custody for debt may order his immediate release, or may, by warrant under their or his hand, directed to the person in whose custody such petitioning Debtor is confined, cause such petitioning

(The verbal differences are within brackets.)

Such Petition shall be dismissed.]—If this occur before the expiration of two months from the filing of the petition, a Commission of Bankrupt may issue under s. 23, *supra*, if the petitioner be a trader liable to the Bankrupt laws

SECTION XCV.

May renew such protection.]—This power of renewal did not exist under 7 & 8 Vic., c. 70, in consequence of which the Commissioners in England often gave a very considerable extent of protection, it having been decided that they had no power to renew; see *Maxeman* v. *Davis*, 3 Dow. & M., 145. This provision is found in s. 211 of the Eng. Consol. Act, 1849.

His immediate release.]—Under 3 & 4 Vic., c. 107, s. 19, Ir., if a prisoner confined for debt do not make satisfaction to the Creditor within twenty-one days of his committal, the creditor is at

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

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Debtor to be brought before them, or one of them, at any sitting, or before the person presiding at any meeting of the Creditors of such petitioning Debtor, and the expense of bringing him up shall be paid out of his estate; and such warrant of the said Commissioners or Commissioner shall be a lawful authority for bringing up such petitioning Debtor.

The President.

7 & 8 Vic., c. 70, § 3, Eng. *comg.* 1st *Sept.* 1844.

XCVI. And be it enacted, That the said [Commissioners, or one of them,][1] shall appoint a fit and proper person, being a Registrar or Official Assignee of the said Court of Bankruptcy, or one of the principal Creditors of the petitioning Debtor, to preside at [any][2] meeting of *the*[3] Creditors *of the petitioning Debtor,*[3] and to report the resolutions thereof to the said Commissioners.

[1] [Commissioner]

[2] [such]

[3] *The words in italics are not in the corresponding section.*

A second meeting may be called.

Same Act, § 4.

XCVII. And be it enacted, That if at such meeting of Creditors *whereof notice shall have*

liberty to apply by petition in a summary way to the Court for the relief of Insolvent Debtors for a vesting order, after which and the usual preliminaries of an order of Court requiring him to file his schedule, if he neglect or refuse so to do, he is then committed to the common gaol of the county or place, &c., (s. 57). There is no provision under this statute directory to the Bankrupt Court upon such an occasion as this. His estate is vested and it is supposed cannot be administered in contravention of a co-ordinate authority. The *release* given under this section is directed to persons "in prison or custody for debt," and how far the condition of a person, whose inchoate imprisonment was for debt, may by removal from the debtor's to the malefactor's side of a prison be altered so as to disqualify him from relief under the statute, may be made a question. Instances have occurred where prisoners refused to undergo the exposure of filing their schedule, upon the equitable grounds of a set off against their detaining Creditor, a complication of accounts requiring a length of time of which the execution Creditor took advantage by the summary mode of arrest.

It may also be questioned how far this *release* may extend to persons *remanded,* after hearing, under the same Act, they being persons "in custody or prison for debt," and at the debtor's side of the prison.

SECTIONS XCVII., XCVIII., XCIX.

Meeting.]—The meetings of Creditors and modes of ascertaining their wishes by voting, being evidently modelled upon similar proceedings in the Court in cases relating to Bankruptcy renders the subject of the present three sections too familiar to require comment.

Whereof Notice.]—The time and manner of serving notice by post or otherwise is the subject

12 & 13 Vict., Cap. 107.

been given, as herein-before directed,[1] the major part in number and value, or nine tenths in value or nine tenths in number whose debts exceed twenty pounds, shall *personally, or by their attorneys thereto duly authorised,*[1] assent to the proposal of such petitioning Debtor, or to any modification thereof, the president shall appoint another meeting of the Creditors, to be held not earlier than [fourteen][2] nor later than twenty-eight days from such first meeting, of which second meeting, and of the purpose thereof, *and of the place of holding same,*[1] notice in writing shall be personally served on every Creditor who was not present by himself [or his Attorney duly authorised][3] at such first meeting [seven][4] clear days at least before the day appointed for such second meeting: provided always, that the [said Commissioners of Bankrupt, or one of them, may][5] order in any special case that service of such notice at the last place of abode or business of any Creditor shall be deemed good service.

At second meeting resolution to bind all.

XCVIII. And be it enacted, That if at [the][1] second meeting of Creditors, three fifths in number and value, or nine tenths in number or nine tenths in value whose debts exceed twenty pounds *present personally or by attorneys thereto duly authorised,*[2] shall agree to

Corresponding Enactments.

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding section.*

[2] [seven]

[3] [or his appointed agent]

[4] [three]

[5] [the Commissioner to whom such Petition as aforesaid is referred may, if he shall think fit, make an]

Same Act. § 5.

[1] [such]

[2] *The words in italics are not in the corresponding section.*

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of rules laid down under the English Act, for which see 2 De Gex, 298. In the instances in this Act the directions come more specifically before us under the statute. For notices, see s. 91, *supra.*

In number and value.]—The qualification of voters, however, although apparently of the same amount as that set forth in ss. 86 and 87, which relate to the Creditors of the Bankrupt voting at meetings for composition, is not altogether the same. Under the present ss. 97 and 98, *every Creditor* whose debt shall *exceed* £20, is entitled to vote. Under sec. 86, every Creditor who has *proved* a debt of *at least* £20, is entitled. Under the present section a Creditor of £20 precisely, cannot vote, and the amount of qualification is admeasured by the amount of balance due between the Debtor and Creditor.—See sec. 99.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] *The words in italics are not in the corresponding section.*

[3] [said]

[4] [of Creditors]

[5] [enacted]

[6] [of the said petitioning Debtor]

[7] [an authorized agent]

7 & 8 Vic., c. 96, § 14, Eng., *comg.* 9 *Aug.*, 1844.

[1] [the said recited act, or]

[2] *The words in italics are not in the corresponding section.*

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accept such arrangement or composition as was assented to at the [ ][3] first meeting [ ][4] and shall reduce the terms thereof into writing, and sign the same, such resolution or agreement (subject to such confirmation as is *next*[2] herein-after [mentioned][5]) shall thenceforth be binding and of full force as well against the petitioning Debtor as against all persons who were Creditors [ ][6] at the date of his petition, and who had notice of the said several meetings of Creditors: provided, however, that such resolution or agreement shall not be valid unless one full third in number and value of all the Creditors of such petitioning Debtor were present at such second meeting, either in person or by [their attorneys duly authorised.][7]

How Creditors to vote.

XCIX. And be it enacted, That in all matters wherein Creditors shall vote, or wherein the assent or dissent of Creditors shall be exercised, in pursuance of or in carrying into effect [ ][1] this Act, *in relation to any arrangement between a Debtor and his Creditors*,[2] every Creditor shall be accounted such (*in value*)[2] in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property, and other such available securities and liens as shall appear to be the balance due; and that all disputes arising in such matters concerning any such amount shall, upon application duly made in that behalf, be examined into by the

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There is not the same direct provision for those whose debts are £20 and under, as has been framed for the Creditors of a Bankrupt under sec. 87, viz., "any Creditor whose debt is below £20, shall not be reckoned in number, but the debt due to such Creditor *shall be computed* in value."

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[said Commissioners, or one of them,][3] who shall have power to determine the same, and, if it seem fit, to refer the examination thereof to [an Official Assignee][4]: provided always, that the amount in respect of which any such Creditor shall vote in any such matter shall not be conclusive of the amount of his debt for any ulterior purposes, in pursuance of the provisions of this Act.

If resolution approved, protection granted.

C. And be it enacted, That within fifteen days next after the passing of such resolution or agreement, the same shall be submitted to the [said Commissioners of Bankrupt, and if the said Commissioners or one of them, if they or][1] he shall think the same reasonable and proper to be executed [after hearing such Creditors, by themselves, their counsel, or attorneys, as may desire to be heard, either for or against such resolution or agreement, shall approve and confirm the same and][2] cause it to be filed [with the registrars of said Court of Bankruptcy,][3] and shall grant to the petitioning Debtor a certificate of such [approval and confirmation,][4] and shall from time to time endorse on such certificate a protection from arrest, and such petitioning Debtor shall be free from arrest at the suit of any person being a Creditor at the date of his petition, and having had such several notice or notices as

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[3] [Commissioner]

[4] [an officer of the said Court]

7 & 8 Vic., c. 70, § 6, Eng., *comg.* 1 *Sept.*, 1844.

[1] [Commissioner acting in the matter of the said Petition, who, if]

[2] [under the direction of the said Court, shall]

[3] [and entered of Record therein]

[4] [filing]

SECTION C.

Endorse on such Certificate a Protection, &c.]—This certificate is different in its nature and effects from that given under sec. 106, *infra*, which is a *final* one, and operates "to all intents and purposes as fully as if the same were a certificate of conformity under a Bankruptcy;" see sec. 106. The protection afforded by the certificate under this section is qualified by conditions which do not accompany the certificate under the other, and its effect extends merely to the person and for a temporary purpose.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

[5] *The words in italics are not in the corresponding section.*

[6] [by the statutes now in force concerning Bankrupts]

[7] [beyond the jurisdiction of the said Court of Bankruptcy]

7 & 8 Vic., c. 70, § 8, Eng., *comg.* 1 *Sept.*, 1844.

[1] [filing]

[2] [and without any deed]

[3] [the statutes relating to Bankrupts]

[4] [Assignee in Bankruptcy]

12 & 13 VICT., CAP. 107.

aforesaid; and any officer arresting such petitioning Debtor at the suit of any such Creditor and on sight of such certificate and protection not releasing such petitioning Debtor, shall be liable to such penalty as is *by this or any other Act in force in Ireland,*[5] provided respecting Bankrupts in the like case [ ][6]: provided always, that no such protection shall be valid in favour of any petitioning Debtor who shall be proved to have been about to abscond [from Ireland,][7] or who has concealed or is concealing any part of his estate or effects, nor against any Creditor whose debt is not truly specified in the petition, nor against any Creditor whose debt has been contracted by reason of any manner of fraud or breach of trust.

Estate to vest in Trustee.

CI. And be it enacted, That from and after the date of the [approval and confirmation][1] of such resolution or agreement all the estate and effects of the petitioning Debtor shall vest in the Trustee (if any such shall be appointed) by virtue of such resolution [ ][2] as fully as if such Trustee were an Assignee under [any Bankruptcy,][3] and every such trustee may sue and be sued as if he were such [Assignee.][4]

Proved to have been about to abscond.]—The 4th section, *supra*, has "about to *quit* Ireland." The word here is *abscond*, which it is submitted means *removing* in order to *conceal* one's self, so as to evade a *liability*, or to that effect. The word is never used in a good sense, but always implies a guilty intent. *Quitting* is simply *leaving* without the suggestion of intent one way or other, and under the 4th section the jurisdiction of the Commissioner must arise upon satisfactory proof of the trader's quitting of Ireland, however innocently. Under this section the jurisdiction will arise according to the interpretation of the word *abscond*.

To have been about to.]—The time or tense in the 4th section is not the same as in this. It has "that *there is* probable cause for believing that such person *is about* to quit."

SECTION CI.

Vest, &c., as if an Assignee in Bankruptcy.]—How estates vest in assignees, see ch. vii, p. 72, *supra*, and sec. 78 of this act and note thereto, referring to sec. 74 *et seq.* of 6 Wm. IV., c. 14, Ir.

12 & 13 Vict., Cap. 107.

Resolution to be enrolled.

CII. And be it enacted, That such resolution shall be entered of record in the office for the enrolment of matters relating to Bankruptcy, and the same, when so enrolled, shall be as effectual, and a certified copy thereof as admissible in evidence, as is now a certificate of appointment of an Assignee or a certified copy thereof.

Trustees to account, every six months.

CIII. And be it enacted, That every such Trustee shall once at least in every six months, or oftener if the said [Commissioners or one of them][1] shall require it, produce to the said [Commissioners or Commissioner,][2] on oath, a full and true account of all monies, property, and effects of such petitioning Debtor which have come to his hands, and of the disposal thereof; and the said [Commissioners or Com-

Corresponding Enactments.

(The verbal differences are within brackets.)

No corresponding section.

(See note.)

Same Act, § 9.

[1] [Commissioner or any two or more of the creditors of such petitioning debtor whose debts amount to one-tenth of the amount of the debts of such debtor]

[2] [Commissioner]

SECTION CII.

Entered of record in the office.]—It will be seen on reference to chap. viii., p. 78, *supra*, that the Court of Bankruptcy in London was constituted a Court of Record, under the provisions of 1 & 2 Wm. IV., c. 56, s. 1, Eng., which will account for the absence of a corresponding English section in the margin above.

As is now a Certificate of appointment of an Assignee.]—By 6 Wm. IV., c. 14, s. 27, the certificate of the appointment or choice of the assignee must be enrolled; and by sec. 111 of same act no such certificate of appointment shall be received as evidence in any Court of Law or Equity unless the same shall have been entered of record. By sec. 112, office copies of instruments filed are made evidence, and by sec. 115, a sealed office copy of a certificate of the appointment of an assignee so entered of record shall in cases where an assignee sues for a sum not exceeding £20, be evidence of the suing out of the Commission and of the person therein named having been made a Bankrupt and of the assignee's appointment. This was to facilitate the recovery of small debts which previously had been scarcely worth the expense of suing for, if defended.

SECTION CIII.

This resembles the provisions in sec. 39, *supra*, whereby assignees are bound to submit to audit at certain periods at the discretion of the Commissioner; and see as to furnishing accounts to creditors, sec. 36, *supra*. See also as to the auditing of assignee's accounts, 6 Wm. IV., c. 14, s. 134, Ir. And see the New Rules of Official Assignees, where they are required to deliver in to the Commissioners "once in every four months," an account properly drawn up and showing balances, &c., (Rule 29 of Rules and Orders, 1st Nov., 1849). If an assignee be removed he is bound to account to the Court "as fully and effectually" as if he "still continued assignee," s. 78, *supra*.

CORRESPONDING ENACTMENTS.

(*The verbal differences are within brackets.*)

[2] [Commissioner]

[3] [such resolution or agreement as aforesaid]

7 & 8 Vic., c. 70, § 10, Eng., *comg.* 1 *Sept.*, 1844.

[1] [Commissioner]

Same Act, § 11.

[1] [Commissioner]

[2] [of such petitioning Debtor]

[3] *The words in italics are not in the corresponding section.*

12 & 13 VICT., CAP. 107.

missioner][2] shall examine the same, and shall certify the result of such examination, and, if need be, order payment to the Creditors of such petitioning Debtor, according to the terms of [the resolution or agreement.][3]

Debtor summoned, &c. as Bankrupts.

CIV. And be it enacted, That if it shall at any time appear to the said [Commissioners or Commissioner,][1] on the representation of the trustee or of any two Creditors, that the petitioning Debtor has not made a true discovery of his estate and effects, or has not duly accounted for any subsequently acquired property (if required by the true intent and meaning of the resolution or agreement), or has wilfully made any false return of creditors, it shall be lawful for said [Commissioners, or either of them,][1] to summon such petitioning Debtor, and to examine him upon oath touching such matters; and such summons and examination shall be enforced in such manner as the summoning and examination of Bankrupts.

Special meetings by order of Commissioner.

CV. And be it enacted, That in case any difficulty shall arise in the execution of the said resolution or agreement, it shall be lawful for the said [Commissioners, or one of them,][1] to cause a special meeting of the Creditors [ ][2] to be assembled *at such time and place, and on such notice given or advertised, as such Commissioners shall appoint,*[3] and the resolution of

SECTION CIV.

If a *Bankrupt* conceal, destroy, make false entries, &c., his certificate is withheld under s. 55, *supra*, and he can be summoned either *before or after* certificate, under 6 Wm. IV., c. 14, s. 49, Ir.

12 & 13 Vict., Cap. 107.

the majority of the Creditors at such meeting, to confirm, alter, or annul the whole or any part of such resolution or agreement, shall be as valid as if it had been part of the original resolution or agreement: provided, however, that if one third in number and value of the Creditors of such petitioning Debtor do not attend such meeting, the resolution thereof shall not be valid unless the same is approved and confirmed by [one of the said Commissioners.][4]

Debtor's Certificate of Conformity.

CVI. And be it enacted, That [so soon as the said resolution or agreement shall have been carried into effect, and the Creditors of the petitioning Debtor shall have been satisfied according to the tenor thereof, the said Commissioners, or one of them, shall, after such notice to the Creditors, by advertisement in the Dublin Gazette or otherwise, as the said Commissioners or Commissioner shall think fit to direct,][1] give to the petitioning Debtor a certificate under the hand and seal of the said [Commissioners or Commissioner, in the form in schedule (L.) setting forth the filing][2] of [the][3] petition, [ ][4] the resolution or agreement of the Creditors, [ ][5] and that the said resolution or agreement has been fully carried into effect, and such certificate shall thenceforth operate to all intents and purposes as fully as if the same were a certificate of conformity [under a Bankruptcy.][6]

Corresponding Enactments.

(The verbal differences are within brackets.)

[4] [the said Commissioner]

Same Act, § 13.

[1] [at such last mentioned meeting the said Commissioner shall]

[2] [Commissioner of the filing]

[3] [the said]

[4] [and of]

[5] [of the said petitioning debtor]

[6] [under the statutes relating to Bankrupts, excepting only that no debt, herein excepted from the operation of this act, shall be barred by the said certificate]

SECTION CVI.

For effect of certificate of conformity, see s. 54, *supra*, and notes thereto.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

7 & 8 Vic., c. 70, § 12.

[1] [so soon as the said resolution or agreement shall have been carried into effect, and the Creditors of the said Petitioning Debtor shall have been satisfied according to the tenor of the same, the said Commissioner shall cause a meeting of the said Creditors to be held before him, and]

[2] [such Trustee]

[3] [under his hand and seal]

[4] [provided always that]

[5] [assembled at such last mentioned meeting]

No corresponding section.

12 & 13 VICT., CAP. 107.

Trustee's Certificate.

CVII. And be it enacted, That [the said Commissioners, or one of them,][1] on being satisfied that the trustee has fully performed his trust, shall give to [him][2] a certificate thereof [in the form in the schedule (M.)][3] and such certificate shall be a full release and acquittance to such trustee, both in law and equity, for all matters done by him as such trustee; [and][4] it shall be lawful for such trustee to receive for his services in the execution of his said trust such sum of money as the major part in number and value of the Creditors [ ][5] shall appoint, subject to the approval and allowance of the said Commissioners.

No priority to Judgment Creditors.

CVIII. And be it declared and enacted, That nothing contained in an Act passed in the session held in the third and fourth years of the reign of her present Majesty, intituled "An Act for abolishing arrest on mesne process in civil actions, except in certain cases, for ex-

SECTION CVIII.

This section is declaratory, and with the four following sections is intended to settle and amend enactments of hitherto doubtful import. The original policy of the Bankrupt laws was to place judgment and simple contract creditors on the same level. An exception was made in 11 & 12 Geo. III., c. 8, Ir., in case of executions actually executed, but this exception was narrowed by 6 Wm. IV., c. 14, s. 126, Ir., by declaring that even if executed, it should not avail where the judgment was had by confession. On this subject, see *Morland* v. *Pellet*, 8 B. & Cr., 722; *Notley* v. *Buck*, ibid. 160. The question in *Notley* v. *Buck*, was applicable in Ireland, as it turned on the 108th sec. of 6 Geo. IV., c. 16, Eng., with which s. 126 of Wm. IV., above is identical. Lord Tenterden there said the *intention* was, to prevent voluntary preferences, and though the words might have gone probably beyond the intention, still the duty of the Court was only to continue and give effect to the provision—*Morland* v. *Pellet* was decided on the same sec. of Geo. IV., (s. 108.) In *Whitmore* v. *Robinson*, 8 Mee. and W., 475, Mr. Baron Parke laid it down that an execution on a warrant of attorney or *cognovit* was defeated by the 108th section above, not only by a prior act of bankruptcy but by an act intervening between seizure and sale. The case itself turned on the construction of 2 & 3 Vic., c. 29, an Act containing but one section, and which is embodied in the present Act. That Act was passed to make executions valid "notwithstanding a prior act of Bankruptcy. An execution on a warrant of attorney or *cognovit*, stood on a different footing, and was defeated not only by a prior act of Bankruptcy, but by one intervening between seizure and sale. Mr. Justice Pattison

12 & 13 Vict., Cap. 107.	Corresponding Enactments.
tending the remedies of Creditors against the property of Debtors, and for the further amendment of the law and the better advancement of justice in Ireland," shall operate or extend to give any preference or priority to any judgment Creditor of or to any security or securities by judgment obtained against any person or persons who has or have become or may hereafter become Bankrupt.	*(The verbal differences are within brackets.)*
Decisions upon judgments heretofore, not affected.	
CIX. Provided, however, and be it enacted, That nothing herein contained shall extend or be construed to extend to or affect any act done before the passing of this Act under the authority of any Court, or to render valid or invalid any judgment or security by judgment declared valid or invalid by any Court of competent jurisdiction before the passing of this Act, or to affect any security or securities by judgment obtained before the first day of July, in the year of our Lord one thousand eight	*No corresponding section.*

said, in *Godson* v. *Sanctuary*, 2 B. & Ad., 255, that the 108th section above had given occasion to more litigation than any section in any act of Parliament ever did.

Subsequent to the acts above cited, the 3 & 4 Vic., c. 105 was passed, whereby it was construed that judgments were extended as charges on the whole property of the Debtor. See *in re Perrin*, 4 Ir. Eq. R., 89, wherein the whole of the law respecting judgments is considered under a very able and elaborate decision made by Mr. Commissioner Macan, and reviewed and confirmed after argument by Sir E. Sugden, Ch. (*ibid.* 362).

In reference to these sections the question of judgments stood simply thus, before the passing of this present statute. By 6 Wm. IV., c. 14, s. 136, Ir., it was enacted, "*That no Creditor having security for his debt or having made any attachment in Dublin or any other place, by virtue of any custom there used, of the goods and chattels of the Bankrupt shall receive upon any such security or attachment more than a rateable part of such debt.*" A provision was, however, made in favour of other parties by preserving the rights of all persons having mortgages or *liens* upon *any part* of the property of such Bankrupt, &c. By 3 & 4 Vic., c. 105, s. 22, judgments were made, specific charges upon the landed property, freehold, or otherwise, of the judgment debtor, which gave to the provision in sec. 136 of 6 Wm. IV., c. 14, a more extended operation than was originally contemplated. Some doubt had been at times entertained as to the intention of 3 & 4 Vic., c. 105, s. 22, upon that subject; and the present section sets those doubts at rest and restores matters to the same position with respect to Bankruptcy in which they stood before the passing of 3 & 4 Vic., c. 105.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

No corresponding section.

12 & 13 VICT., CAP. 107.

hundred and thirty-six, and before the Bankrupt became a trader, liable to become a Bankrupt.

Warrants of Attorney, how filed.

CX. And whereas by the said last-mentioned Act it is enacted, That from and after the first day of November, one thousand eight hundred and forty, every warrant of attorney to confess judgment in any personal action, or a true copy thereof, and of the attestation thereof, and of the defeazance and endorsement thereon (if any), shall be filed in manner therein directed, or judgment thereon entered, within twenty-one days after the execution of such warrant of attorney: and whereas doubts have arisen whether it is necessary that any warrants of attorney should be filed or judgments thereon entered, unless such warrants were executed on or subsequent to the said first day of November, one thousand eight hundred and forty: be it therefore enacted, That judgment shall, on or before the first day of November, one thousand eight hundred and forty-nine, be entered in one of her Majesty's Courts of Record in Dublin, upon all warrants of attorney which were executed on or before the said first day of November, one thousand eight hundred and forty, and which have not been filed in manner aforesaid within twenty-one days after the execution thereof, or on which judgment has not already been entered; and in case judg-

SECTION CX.

By this section the operation of 3 & 4 Vic., c. 105, ss. 12 & 13, which required, that from and after the 1st of Nov., 1840, warrants of attorney in actions personal should be filed within twenty-one days after their execution, is now extended to all such warrants of attorney, dated anterior to that period. It was passed in order to set at rest a doubt which had been entertained respecting the application of the phrase " first day of November, one thousand eight hundred and forty," in the 13th section above referred to.

ment is not entered upon any such warrant of attorney before the said first day of November one thousand eight hundred and forty-nine, any judgment entered thereupon subsequent thereto, and any execution issued thereon, shall be deemed fraudulent and void against the assignees appointed or to be appointed under any Commission of Bankrupt issued or to be issued against the person who shall have given such warrant of attorney, and against the provisional or other assignee or assignees of such person, if an insolvent Debtor; and such assignee or assignees shall be entitled to recover back and receive, for the use of the Creditors of such Bankrupt or prisoner, all and every the monies levied or effects seized under and by virtue of such judgment and execution.

Pleas of Confession, &c., to be Filed.

CXI. And be it enacted, That from and after the commencement of this Act the provisions, regulations, and directions contained in the said Act of the third and fourth years of her present majesty, in reference to the filing of warrants of attorney to confess judgments, or copies thereof, and the numbering, entering, and searching for the same, shall be applicable, deemed, and construed, to apply equally to any plea of confession, cognovit actionem, and all manner of acknowledgments or consents for judgments, and copies thereof respectively, in any suit or proceeding in

(The verbal differences are within brackets.)

3 & 4 Vic. c. 105, § 12 & 13, Ir., *as now amended by the subjoined section, (the amending words being given in italics.)*

——— for remedy whereof be it enacted, that from and after the first day of November 1840, if the holder thereof shall think fit, every warrant of attorney to confess judgment in any personal action *and every plea of confession, cognovit actionem and every manner of acknowledgment, or consent for judgment*, or true copies thereof, and of the attestations thereof *respectively*, and the defeazance and endorsement thereon, (if any,) shall within twenty-one days after the execution of such warrant of attorney *plea of confession, cognovit actionem, or such acknowledgment or consent for*

SECTION CXI.

The simplest mode of explaining this enactment is to direct the reader to take up secs. 12 & 13 of 3 & 4 Vic., c. 105, Irish, and insert the following words, "Plea of Confession, *cognovit actionem*, and every manner of acknowledgment or consent for judgment, in their respective places after the words "action," &c., as given in the margin above.

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

judgment, be filed together with an affidavit of the time of execution thereof, with the proper officer in one of her Majesty's superior Courts at Dublin, in which judgment upon such warrant of attorney *plea of confession, cognovit actionem, or acknowledgment, or consent for judgment respectively*, shall thereafter be entered up.

* § 13 *of same.*

[1] [of such warrant of attorney]

[2] *The words in italics are not in the corresponding section.*

[3] [file]

[4] [whereon]

[5] [such warrant of attorney]

12 & 13 VICT., CAP. 107.

any of the superior courts of law in Ireland, and to the numbering and entering of, and searching for the same, as fully and effectually as if such pleas of confession, cognovits, acknowledgments, and consents for judgments, or the copies thereof, had been expressly mentioned in the said act, and required to be filed;* and if at any time after twenty-one days next after the execution *or signing* [of][1] *any plea of confession, cognovit actionem, acknowledgment, or consent for judgment*,[2] a Commission of Bankrupt shall be issued against the person who, *by himself or his attorney*,[2] shall have given such plea, cognovit, acknowledgment, or consent for judgment, under which he shall be duly found and declared a Bankrupt, or if any such person shall be imprisoned for debt, and [upon][3] a petition to the Court for the relief in Insolvent Debtors [in Ireland],[4] a vesting order shall be made under the provisions of any Act for the relief of Insolvent Debtors in Ireland, then, and in such case, unless [such][5] *plea, cognovit, acknowledgment, or consent for judgment*,[2] or a copy thereof, shall have been (within twenty-one days from the execution or signing thereof, or within twenty-one days from the commencement of this Act,) duly filed, pursuant to the provisions of the said herein-before recited Act of the third and fourth years of her present Majesty's reign, or of this Act, or unless within the said twenty-one days judgment shall have been entered thereon, and such judgment duly registered in the office of the Registrar of Judgments, according to the provisions of an Act passed in the seventh and eighth years of the reign of her present Ma-

12 & 13 Vict., Cap. 107.

jesty, intituled "An Act for the protection of purchasers against judgments, crown debts, lis pendens, and Commissions of Bankruptcy; and for providing one office for the registering of all judgments in Ireland; and for amending the laws in Ireland respecting Bankrupts and the limitation of actions," [such][1] *plea of confession, cognovit, acknowledgment, or consent for judgment*,[2] and the judgment and execution thereon, shall be deemed fraudulent and void against the assignees under such Commission, and against the provisional or other assignee of such prisoner, and such assignee or assignees shall be entitled to recover back and receive, for the use of the Creditors of such Bankrupt or prisoner, all and every the monies levied or effects seized under and by virtue of such judgment and execution.

Corresponding Enactments.

(The verbal differences are within brackets.)

[1] [such warrant of attorney]

[2] *The words in italics are not in the corresponding section.*

Fees for Searching, One Shilling.

CXII. And be it enacted, That from the commencement of this Act, instead of the fee of sixpence, hitherto payable to the masters of the said superior courts, for every search against each person, there shall be payable a fee of one shilling, and no more, for each search, whether some only, or all of the books shall be searched, and whether the search shall be against one or more persons.

No corresponding section.

All other Judgments to be Registered.

CXIII. And be it enacted, That if at any time after twenty-one days from the entering or signing of any judgment whatever in any of

No corresponding section.

SECTION CXIII.

See notes to secs. 108, 110 and 111. It should be observed that none of the preceding enactments concerning judgments, acknowledgments, &c., affect those records or instruments further than as appertains to matters in Bankruptcy or Insolvency respectively, as the case may be

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

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the said superior courts (save and except judgments entered upon, or by virtue of warrants of attorney, pleas of confession, or consents for judgments, which warrants of attorney, pleas of confession, or consents for judgments, or copies thereof, shall have been duly filed, under the provisions of this act, or of the herein-before recited Act of the third and fourth years of the reign of her present Majesty,) a Commission of Bankrupt shall be issued against the person, against whom such judgment shall be entered or obtained, under which he shall be duly found and declared a Bankrupt, or if such person shall be imprisoned for debt, and upon a petition to the Court for relief of Insolvent Debtors in Ireland, a vesting order shall be made, under the provisions of any Act for the relief of Insolvent Debtors in Ireland, then and in such case, unless such judgment shall have been duly registered within twenty-one days from the entering or signing thereof in the said office of the registrar of judgments, such judgment, and any execution thereon, shall be deemed fraudulent and void, against the assignees under such Commission, and against the provisional or other assignee of such prisoner, and such assignee or assignees shall be entitled to recover back and receive, for the use of the Creditors of such Bankrupt or prisoner, all and every the monies levied, or effects seized under, and by virtue of such judgment and execution.

They are not rendered invalid, nor fraudulent and void in any other instances by this act; see however, 12 & 13 Vic., c. 95, Ir., respecting the effect of judgments, and mode of dealing with them, henceforth in Ireland.

12 & 13 VICT., CAP. 107.	CORRESPONDING ENACTMENTS.
	(The verbal differences are within brackets.)
Petitions of Appeal, Twenty-one Days.	
CXIV. And be it enacted, That every petition of appeal from any judgment, order, or other decision of either of the said Commissioners of Bankrupt, shall be filed in the office of Lord Chancellor's Secretary of Bankrupts, within twenty-one days next after the day on which such judgment, order, or other decision is made or pronounced, and not afterwards; and that on the hearing of each petition of appeal the only documents or evidence to be relied on or admissible shall be such as were produced or given before the Commissioner whose judgment, order, or decision is appealed from.	*See* 1 & 2 W. IV., c. 56, § 32, Eng. Appeal to Lord Chancellor of England from Court of Review, must be within *one month.* Altered by 12 & 13 Vic., c. 106, § 16, appeal to Lord Chancellor of England from Vice-Chancellor, must be entered within twenty-one days from date of order.
No Stamp Duty.	
CXV. And be it enacted, That all affidavits and other writings whatsoever, and all advertisements inserted in the *Dublin Gazette* relating to any proceedings under or in pursuance of this Act, shall not be liable to any stamp duty or other duty whatsoever.	6 Geo. IV., c. 16, § 98, Eng., *rep.* by 12 & 13 Vic., c. 106; *re-enacted by* § 138 *of same, from* 11*th Oct.* 1849. (*See also* 6 W. 4, c. 14, s. 116, Ir.)
Lord Chancellor to settle Fees.	
CXVI. And be it enacted, That it shall and may be lawful for the Lord Chancellor from time to time to settle and regulate the fees which shall be [taken and paid upon all matters and proceedings done, had, or taken, or to be done, had, or taken, under or in pursuance of this Act or of any of the powers hereby given, or][1] in the execution thereof, other than such ees as are hereby ordered to be paid, and, he shall think fit, to direct that any of the	6 W. 4, c. 14, s. 8, Ir., *comg.* 1 *July*, 1836 (*subsisting*). [1] [taken by and paid to the several officers concerned in the issuing and suing forth and execution of every such Commission of Bankruptcy as aforesaid, and of all petitions and proceedings]

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

No corresponding section.

5 & 6 Vic., c. 122, § 93, Eng., *comg.* 11 Nov., 1842, *rep. by* 12 & 13 Vic., c. 106, *Eng.*, *re-enacted with amendments*, § 276 *of same*, *from* 11 Oct., 1849.

12 & 13 VICT., CAP. 107.

said fees shall be paid into the "Bankruptcy and Compensation Fund Account."

Secretary, Registrar, and others, Officers of Court of Chancery.

CXVII. And be enacted, That the secretary of Bankrupts, registrars, provisional assignees, and all other officers appointed or to be appointed under the said recited acts or this act, except the Commissioners of Bankrupt, shall, from and after the passing of this act, be deemed and considered to be officers of the Court of Chancery in Ireland, and subject and liable to the like incapacity of acting as attornies or solicitors, and to the same liabilities and penalties as to removal from office for misconduct, and as regards the exacting or taking any fee or sum of money not allowed by law, and generally in all respects as any officer of the said Court is or may be by law liable or subject to.

Construction Clause.

CXVIII. And be it enacted, That the words and expressions herein-after mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; that is to say, the words "her Majesty," shall mean also and include the heirs and successors of her Majesty; and the words "Lord Chancellor" shall mean also and include the Lord Chancellor, Lord Keeper, and Lords Commissioners for the custody of the great seal of [Ireland,][1] for the

[1] [the united kingdom]

12 & 13 VICT., CAP. 107.

time being [ ][2]; *the words "Commissioners" and "Commissioner" shall mean "Commissioners of Bankrupt" or one of them;*[3] and the word "month" shall mean a calendar month; and the word "Oath" *or "affidavit"*[3] shall include affirmation *and declaration,*[3] where by law such affirmation *or declaration*[3] is required or allowed to be taken in place of an oath; *and the word "Creditor" shall mean and include all joint stock banking companies and corporate bodies; and every affidavit or oath necessary to be made by any Creditor may be made by the public officer authorised to sue or be sued or to make oaths by and on behalf of such joint stock banking company, or by the secretary or deputy secretary of any corporate body; and the schedules hereto annexed shall be considered and construed as part of this Act;*[3] [ ][4] and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and bodies corporate as well as individuals; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and that this Act shall apply to aliens, denizens, and women, both to make them subject thereto and to entitle them to all the benefits given thereby; and that this Act shall not extend [to either England or Scotland,][5] except where the same are expressly mentioned; and that this Act, *and all other Acts in force or to be in force*

CORRESPONDING ENACTMENTS.

(The verbal differences are within brackets.)

[2] [and the words fiat or fiats, or fiat in Bankruptcy or fiats in Bankruptcy shall mean also and include any Commission of Bankrupt]

[3] *The words in italics are not in the corresponding section.*

[4] [and the word "Bank of England" shall include all branches thereof]

[5] [either to Scotland or Ireland]

12 & 13 Vict., Cap. 107.

concerning Bankrupts shall be construed together as parts of one and the same statute,[3] in the most beneficial manner for promoting the benefit of Creditors of Bankrupts, and the ends *thereby and*[3] hereby intended.

Act may be amended, &c.

CXIX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of parliament.

Corresponding Enactments.

(The verbal differences are within brackets.)

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[3] *The words in italics are not in the corresponding section.*

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.) [Sec. xi.

No. 1.

Affidavit for summoning a Trader Debtor.

A. B. of and C. D. of severally make oath and say, and first this deponent A. B. for himself saith, that E. F. of [*describe fully*] is justly and truly indebted to this deponent in the sum of pounds, for, &c. [*stating the nature of the debt with certainty and precision*]; and this deponent further saith, that the said E. F., as this deponent verily believes, is a trader within the meaning of the statutes relating to Bankrupts, or some or one of them, and resides at and that an account in writing of the particulars of the demand of the said A. B., amounting to the said sum of pounds, with a notice thereunder, written in the form prescribed by the statute in that case made and provided, purporting to require immediate payment of the said debt, is hereunto annexed; and this deponent C. D. for himself saith, that he did on the day of instant [*or* last] personally serve the said E. F. with a true copy of said account and notice.

Sworn, &c.

No. 2.

Particulars of demand and notice requiring payment.

To E. F. of

The following are the particulars of the demand of the undersigned A. B. of against you the said E. F., amounting to the sum of pounds [*here copy account*].

Take notice, That I the said A. B. hereby require immediate payment of the said sum of pounds. Dated this day of in the year of our Lord

(Signed) A. B.

This Schedule (A.) is verbatim with Schedule A. of 5 & 6 Vic., c. 122, Eng., and is re-enacted in substance in Schedule (F.) of the Consol. Act, 1849, Eng.

No. 3.

Summons of Trader Debtor.

These are to will and require you to whom this summons is directed, personally to be and appear before the Commissioners of Bankrupt, or one of them, at the Court of Bankruptcy, at the Four Courts, Inns-quay, Dublin, on the day of at o'clock; and you are hereby informed that the purpose for which you are thus summoned to appear before the said Commissioners or Commissioner is to ascertain, in manner and form prescribed by the statute in that case made and provided, whether or not you admit the demand of A. B. of (who claims of you the sum of pounds for a debt,) or any and what part thereof, or whether you verily believe that you have a good defence to the said demand, or to any and what part thereof; and hereof you are not to fail, at your peril. Given under my hand, the day of in the year of our Lord

(Signed) J. K.
Commissioner.

To E. F. of

This is verbatim with No. 3 of Schedule A. of 5 & 6 Vic. c. 122, save that in lieu of the words "Commissioners" to "Dublin," both inclusive, it has the following:—" Court of Bankruptcy to be holden in Basinghall-street, in the city of London (or at in the county of)," re-enacted in substance, Schedule (H.) of Consol. Act, 1849, Eng.

SCHEDULE (B.) [SEC. XII.

No. 1.

Admission of Debt by Trader Debtor.

Court of Bankruptcy, Dublin,
Day of

Whereas I the undersigned E. F. of am summoned to appear before this Honourable Court for the purpose of stating, in manner prescribed by the statute in that case made and provided, whether or not I admit the demand of A. B. of (who claims of me the said E. F. the sum of pounds for a debt,) or any part thereof, or whether I verily believe that I have a good defence to the said demand, or to any and what part thereof: Be it known, That I the said E. F. hereby confess that I am indebted to the said A. B. in the said sum of pounds [*or* in part of the said sum of pounds, that is to say, in the sum of pounds].

(Signed) E. F.

Admitted before me, J. K.
Commissioner.

Same as No. 1, Schedule (B.,) of 5 & 6 Vic. c. 122, save Title of Court, which is, "Court of Bankruptcy, Basinghall-street, London," &c.; and see Schedule (I.) of Consol. Act, 1849, Eng.

No. 2.

Deposition by Trader Debtor of belief of good answer to Creditor's demand, or some part thereof.

Court of Bankruptcy, Dublin, Day of A.D.

E.F. of being sworn on the day and year and at the place aforesaid, upon his oath saith, That he verily believes he has a good defence to the demand [*or* to pounds, part of the demand] herein-after mentioned of A.B. of who claims of the said E.F. the sum of pounds for a debt alleged to be due and owing from the said E.F. to said A.B., as stated in the affidavit of the said A.B. filed in the office of the Lord Chancellor's Secretary of Bankrupts, and bearing date the day of

Sworn before me,
E. F. J. K.
Commissioner.

5 & 6 Vic., c. 122, Eng., Schedule (B.,) No. 2. See Schedule (J.) Consol. Act, 1849, Eng.

SCHEDULE (C.) [Sec. xvii.

Admission of Debt by Trader Debtor, signed out of Court.

I the undersigned E. F. of do hereby confess, that I am indebted to A. B. of in the sum of pounds.

(Signed) E. F.

Dated this day of A.D.

Witness,
G. H., Attorney for the said E. F., and subscribing witness to the execution hereof as such attorney.

Same verbatim as Schedule (C.) of 5 & 6 Vic., c. 122, Eng. and see Schedule (L.) Consol. Act, 1849, Eng.

SCHEDULE (D.) [SEC. XXII.

Declaration of Insolvency by Trader.

I the undersigned E. F. of do hereby declare, that I am unable to meet my engagements.

Dated this day of in the year of our Lord

(Signed) E. F.

Witness,
G. H., Attorney of the Court of

Same verbatim as Schedule (D.) of 5 & 6 Vic., c. 122, Eng., and see Schedule (D.) of Consol. Act, 1849. Eng.

SCHEDULE (E.) [SEC. XLIX.

Warrant of Committal of Bankrupt or other Party for unsatisfactory answering, or for refusing to Sign his Examination.

Court of Bankruptcy, Dublin.

In the matter of Bankrupt. Whereas E. F. the said Bankrupt [*or* C. H. of in the county of] was on the day of duly sworn and examined in this Court before me, the Commissioner of Bankrupt whose name and seal are hereunto subscribed and affixed:

And the said was again on the day of duly sworn and examined before me the same Commissioner, as by the examination and deposition of the said now on the file of proceedings in this matter will appear:

And whereas the answers of the said as now so appearing in said examination and deposition, are unsatisfactory [*or* the said refused to sign and subscribe his said examination and deposition]:

These are therefore to authorize and require you my messenger to whom this my warrant is directed, immediately upon the receipt hereof, to take into your custody the said and him safely convey to her Majesty's prison of and him there to deliver to the governor of the said prison, who is hereby authorized and required to receive the said into his custody there, and him safely keep and detain, without bail, until he shall submit himself to the Commissioners of Bankrupt, and sign and subscribe his said examination and deposition, [*or* and full answers make,] to the satisfaction of said Commissioners to such questions as shall be propounded to him.

Done at the said Court, this day of 18

J. K.
Commissioner.

To
Messenger, and his assistants,
and to
governor of the said prison,
or his deputy there.

The above Form is necessarily different in its most material parts from any given in the English statutes or Books of Practice. The law in that respect being no longer the same in both countries. See section 49, *ante*, and notes at foot thereof.

SCHEDULE (F.)

[Sec. xlix.

Warrant for refusing to be sworn or to answer.

Court of Bankruptcy, Dublin.

In the matter of Bankrupt.

Whereas E. F. of *or* C. H. of being present in this Court on this day of was by me, the Commissioner of Bankrupt whose name and seal are hereunto subscribed and affixed, required to submit to be duly sworn and examined, pursuant to the statutes relating to Bankrupts but the said then and there refused to be sworn [or refused to answer the questions put to him by the said Commissioner]:

These are therefore to authorize and require you my messenger to whom this my warrant is directed, immediately upon receipt hereof, to take into your custody the said and him safely to convey to her Majesty's prison of and him there to deliver to the governor of the said prison, who is hereby authorized and required to receive the said into his custody there, and him safely keep and detain, without bail, until he shall submit himself to the Commissioners of Bankrupt to be sworn, and full answers make to their satisfaction to such questions as shall be propounded to him.

Done at the said Court, this day of 18

J. K.
Commissioner.

To
Messenger, and his assistants,
and to governor of
the said prison, or to his deputy
there.

The observations at foot of Schedule (E.) apply equally to this warrant.

SCHEDULE (G.)

[Sec. xlix.

Warrant of committal for disturbing or interrupting the Court.

6 *W.* 4, *cap.* 14, *sec.* 158.

Court of Bankruptcy, Dublin.

In the matter of Bankrupt.

Whereas at a sitting in this matter duly holden in the said Court on the day of 18 , before me, the Commissioner of Bankrupt whose name and seal are hereunto subscribed and affixed, E. F., &c., [*or* G. H., &c.] was guilty of riot [*or* of disturbance,] [*or* did interrupt me the said Commissioner in the exercise of my duty]:

These are therefore to authorize and require you my messenger to whom this my warrant is directed, immediately upon the receipt hereof, to take into your custody the said and him safely convey to her Majesty's prison of and him there to deliver to the governor of the said prison, who is hereby authorized and required to receive the said into his custody, and him safely keep and detain for one calendar month [*or* for days from this date.]

Done at the said Court, this day of 18 .

J. K.
Commissioner.

To
Messenger, and his assistants,
and to
governor of the said prison,
or his deputy there.

See 1 Vic., c. 48, s. 12, Ir., as to exemption from prosecution at suit of Attorney-General, when committed under the 6 Wm. 4, as above.

SCHEDULE (H.) [Sec. xlii.

Search Warrant.

Court of Bankruptcy, Dublin, day of A. D.

In the matter of a Bankrupt. } Whereas by evidence, duly taken upon oath, it hath been made to appear to the satisfaction of me, the undersigned Commissioner of Bankrupt, acting in the prosecution of a Commission of Bankruptcy now in prosecution against A. B. of in the county of bearing date the day of that there is reason to suspect and believe that property of the said A. B. is concealed in the house of one C. D. of in the county of such house not belonging to the said Bankrupt:

These are, therefore, by virtue of the Act intituled "An Act for the amendment of the law of Bankruptcy in Ireland," to authorise and require you, with necessary and proper assistants, to enter in the daytime into the house and premises of the said C. D., situate at aforesaid, and there diligently to search for the said property, and if any property of the said Bankrupt shall be there found by you, on such search, that you seize the same, and keep possession thereof until it be disposed of and dealt with according to the provisions of the laws made and in force concerning the disposition of the estate and effects of Bankrupts.

Done at the said Court, this day of
in the year of our Lord 18

J. K.
Commissioner.

To
W. W., Assistant Messenger of
the Court of Bankruptcy, and
his Assistants.

See 12 & 13 Vic. c. 106, Eng. (Sch. V.) The difference between this search warrant and that under Sch. V. has been already commented upon in the notes to s. 42, page 121, *supra.*

SCHEDULE (I.)

[Sec. xci.

Petition for Arrangement to the Commissioners of Bankrupt.

The humble petition of

Showeth,

That your petitioner, being a Debtor unable to meet his engagements with his Creditors, petitions the Commissioners of Bankrupt under the provisions of the "Act for the amendment of the law of Bankruptcy in Ireland," with the concurrence of two-thirds in number and value of his Creditors, as is testified by their signing this his petition:

That the following is a full account of your petitioner's debts, and the consideration thereof, and the Names, Residences, and Occupations of his Creditors, and also a full account of your petitioner's estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property, of what kind soever, held in trust for him; viz.—

Name of Creditor.	Residence.	Occupation.	When Debt contracted, and Consideration thereof.	Amount of Debt.

That the inability of your petitioner to meet his engagements with his Creditors arises from

That for the future payments or compromise of such debts and engagements your petitioner proposes

and two-thirds in number and value of your petitioner's Creditors having assented to such proposal:

Your petitioner therefore prays, that such proposal (or such modification thereof as by the majority of his Creditors may be determined) may be carried into effect under the superintendence and control of the Commissioners of Bankrupt, and that he may in the meantime be protected from arrest.

And your petitioner shall ever pray, &c.

Signed by the petitioner in the presence of

solicitor in the matter of this petition.

CONCURRING CREDITORS.

Signature.	Amount.

See Form of Petition for Arrangement under Consol. Act, 1849, Eng., Sch. (A a), but the word "Trader" is used, not "Debtor;" and see "Rules and Orders" framed under 7 & 8 Vic., c. 70, Eng., by the Commissioners in London, dated 11th Jan. 1845, and the details of Petitions therein required.—(See 2 D. Gex., B. L., p. 293.)

SCHEDULE (K.)

[Sec. xci.

Affidavit in support of Petition for Arrangement.

Court of Bankruptcy, day of A.D.

of in the of the petitioner named in the petition hereunto annexed, maketh oath and saith, that the several allegations in the said petition are true.

Sworn at this day of one thousand eight hundred and forty before me,

See a similar Form in Sch. (A b) of Consol. Act, 1849, Eng., with this difference, that it concludes with the following words after the word "true," *and that he, this Deponent, hath assets ready to be produced to this Honorable Court, to the value of* £200 *and upwards.* In the English Rules of 1845, above referred to, Rule 3 required that a sum not exceeding £20, nor less than £10, be lodged with the Messenger in the first instance, previous to an appointment of a meeting.

SCHEDULE (L.)

[Sec. cvi.

Certificate to Petitioning Debtor.

Court of Bankruptcy, Dublin, day of A.D.

Whereas of a Debtor unable to meet his engagements with his Creditors, did on the day of with the concurrence of two-thirds in number and value of his Creditors, present his petition to the Commissioners of Bankrupt under the Provisions of "the Act for the amendment of the law of Bankruptcy in Ireland," praying that a certain proposal therein contained, or such modification thereof as by the majority of his Creditors might be determined, should be carried into effect, under the superintendence and control of the said Commissioners, and the said petition has been duly filed with the registrars of said Court: and whereas one of the said Commissioners acting in the matter of the said petition, caused such meetings of the Creditors of the said to be held as are directed by the said Act: and whereas a certain resolution or agreement was duly assented to at such meetings of the Creditors, which the said Commissioners, thinking the same to be reasonable, and proper to be executed, under the direction of the said Commissioners, caused to be filed and entered of Record as by said Act directed: and whereas I am satisfied that the said has fully performed his part of the said resolution and agreement, I hereby certify the several matters aforesaid, under my hand and seal, this day of 18

J. K.
Commissioner.

The Form given in Sch. (A c) of the Consol. Act, 1849, Eng., is the same as the above, substituting the word "Trader," for "Debtor."

SCHEDULE (M.) [Sec. cvii.

Certificate to Trustee.

Court of Bankruptcy, Dublin, day of A.D.

Whereas of a Debtor unable to meet his engagements with his Creditors, did on the day of with the concurrence of two-thirds in number and value of his Creditors, present his petition to the Commissioners of Bankrupt under the provisions of "the Act for the amendment of the law of Bankruptcy in Ireland," praying that a certain proposal therein contained should be carried into effect, under the superintendence and control of the said Commissioners, and the said petition has been duly filed with the registrars of said Court: and whereas one of the said Commissioners acting in the matter of the said petition, caused certain meetings of the Creditors of the said to be held pursuant to the said Act: and whereas a certain resolution or agreement was duly assented to at such meetings of Creditors, which the said Commissioners, thinking the same to be reasonable, and proper to be executed, under the direction of the said Commissioners, caused to be filed and entered of Record as by said Act directed: and whereas the said resolution or agreement has been fully carried into effect, and I am satisfied that the trustee appointed to carry the said resolution or agreement into effect, has fully performed his trust, I hereby certify the same under my hand and seal, this day of 18

J.K.
Commissioner.

The Form of Certificate of a like nature given in Sch. (A d) of the Consol. Act, 1849, Eng., is substantially the same as the above, but directed and given to the Official Assignee, not a Trustee—that being the person in whom the Petitioning Trader's estate, &c., vests, under sec. 213 of that Act.

ANNO SEXTO

GULIELMI IV. REGIS.

CAP. XIV.

6 WM. IV., CAP. 14.

An Act to amend the Laws relating to Bankrupts in Ireland. [20*th May*, 1836.]

"WHEREAS it is expedient to amend the laws relating to Bankrupts, and to consolidate the same so amended in one Act, and to provide means of administering and distributing the estate and effects of Bankrupts other than are now provided by law:" Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That an Act passed in the Parliament of Ireland, in the eleventh and twelfth years of the reign of King George the Third, intituled "An Act to prevent frauds committed by Bankrupts;" and also so much of an Act passed in the Parliament of Ireland in the seventeenth and eighteenth years of the reign of King George the Third, intituled "An Act for the amendment of the law with respect to outlawrys, returning special juries, and the future effects of Bankrupts, in certain cases," as relates to the property of Bankrupts; and also an Act passed in the Parliament of Ireland in the seventeenth and eighteenth years of

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

6 GEO. 4, CAP. 16.

An Act to amend the Laws relating to Bankrupts. [2*nd May*, 1825.]

Whereas it is expedient to amend the law relating to Bankrupts, and to simplify the language thereof, and to consolidate the same so amended and simplified, in one Act, and to make other provisions respecting bankrupts; be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that an Act passed in the 34 and 35 Hen. 8, intituled "An Act against such persons as do make Bankrupt;" and also an Act passed in the 13 Eliz., intituled, "An Act touching orders for Bankrupts;" and also an Act passed in the 1 Jac., 1, intituled, "An Act for the better relief of the Creditors against such as shall become Bankrupts;" and also an Act passed in the 21 Jac. 1, intituled, "For the further description of a Bankrupt, and relief of Creditors against such as shall become Bankrupts, and for inflicting corporal punishment upon the Bankrupts, in some special cases;" and also an Act passed in the 13 & 14 Car. 2, intituled, "An Act declaratory concerning Bankrupts;" and also an Act passed in the 10 Anne, intituled "An Act for repealing a clause in the above-mentioned statute, passed in the 21 Jac. 1, and for the explanation of the laws relating to Bankruptcy in cases of partnership;" and also an Act made in the 7 Geo. 1, intituled "An Act for explaining and making more effectual the several Acts concerning Bankrupts;" and also an Act passed in the 5 Geo. 2, intituled "An Act to prevent the committing of frauds by Bankrupts;" and also an Act passed in the 19 Geo. 2, intituled "An Act for amending the laws relating to Bankrupts;" and also so much of an Act passed in the 24 Geo. 2, the title of which begins with the words, "An Act to continue several laws therein mentioned for preventing theft and rapine," and concludes with the words "and to make some further provisions in relation to the signing of certificates for the discharge of Bankrupts," as relates to the prevention of frauds by bankrupts, and to some further provisions in relation to the signing of certificates for the discharge of Bankrupts; and also an Act passed in the 4 Geo. 3, intituled, "An Act for preventing inconveniences arising in cases of merchants and such other persons as are within the description of the statutes relating to Bankrupts being entitled to privilege of parliament, and be-

the reign of King George the Third, intituled "An Act to exclude traders from the benefit of an Act, intituled 'An Act to prevent frauds committed by Bankrupts,' who do not keep regular books of account, and for continuing the said law, and other purposes;" and also an Act passed in the Parliament of Ireland in the nineteenth and twentieth years of the reign of King George the Third, intituled "An Act to explain an Act, intituled 'An Act to prevent frauds committed by Bankrupts;'" and also so much of an Act passed in the Parliament of Ireland in the twenty-first and twenty-second years of the reign of King George the Third, intituled "An Act for reviving, continuing, and amending several temporary statutes," as relates to Acts relating to Bankrupts; and also so much of an Act passed in the Parliament of Ireland in the twenty-first and twenty-second years of King George the Third, intituled "An Act for the relief of insolvent persons under a certain description," as relates to Bankrupts; and also an Act passed in the Parliament of Ireland in the twenty-sixth year of the reign of King George the Third, intituled "An Act for the relief of uncertificated Bankrupts;" and also so much of an Act passed in the Parliament of Ireland in the twenty-eighth year of the reign of King George the Third, intituled "An Act for continuing the Acts relative to Bankrupts, and for reviving, continuing, and amending certain temporary statutes," as relates to Acts relative to Bankrupts; and also an Act passed in the Parliament of Ireland in the thirtieth year of the reign of King George the Third, intituled "An Act to repeal certain clauses in an Act passed in the seventeenth and eighteenth years of his Majesty's reign, intituled 'An Act to exclude traders from the benefit of an Act, intituled "An Act to prevent frauds committed by Bankrupts," who do not keep regular books of account, and for continuing the said

6 Wm. IV, Cap. 14.

law, and other purposes;" and also so much of an Act passed in the Parliament of Ireland in the thirty-sixth year of the reign of King George the Third, intituled "An Act to make perpetual the laws for preventing frauds committed by Bankrupts, also for providing a maintenance for parish clerks, and for continuing certain other temporary statutes," as relates to Bankrupts; and also an Act passed in the Parliament of Ireland in the thirty-seventh year of the reign of King George the Third, intituled "An Act for the relief of uncertificated Bankrupts;" and also an Act passed in the Parliament of Ireland in the thirty-ninth year of the reign of King George the Third, intituled "An Act for the relief of uncertificated Bankrupts;" and also an Act passed in the Parliament of Ireland in the fortieth year of the reign of King George the Third, intituled "An Act for the relief of uncertificated Bankrupts;" and also an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland in the forty-sixth year of the reign of King George the Third, intituled "An Act to amend the laws relating to Bankrupts;" and also an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland in the forty-ninth year of the reign of King George the Third, intituled "An Act to alter and amend the laws relating to Bankrupts;" be and the same are hereby repealed, save so far as the same repeal any other Act: Provided, however, that all matters heretofore done, or, until this Act shall take effect, to be done, under the said Acts or any of them, shall be as valid and effectual as if the said Acts were still in force.

By s. 1 of 12 & 13 Vic., c. 107, Ir., it is enacted that "it is adviseable to extend the provisions and regulations contained in said act," (citing 6 Wm. 4, c. 14, Ir.); and by s. 2 of same, it is enacted "that all laws, statutes, and usages, shall be and the same are hereby repealed, in so far as they may be inconsistent or at variance with the provisions of this act," and then follows a provision "that the same shall continue in force in all other

Corresp. Enactments.

(The verbal differences are within brackets.)

coming insolvent;" and also so much of an Act passed in the 36 Geo. 3, intituled "An Act for the relief of persons equitably and beneficially entitled to or interested in the several stocks and annuities transferable at the Bank of England," as relates to trustees in whose names stock shall be standing at the Bank, becoming Bankrupt, and to Bankrupts refusing to transfer stock standing in their own right;" and also an Act passed in the 37 Geo. 3, intituled "An Act to make perpetual an Act passed in the 5 Geo. 3, intituled 'An Act to prevent the committing of frauds by Bankrupts;' and also so much of an Act passed in the 45 Geo. 3, intituled "An Act to amend an Act passed in the fourth year of his present Majesty, intituled 'An Act for preventing inconveniences arising in cases of merchants and such other persons as are within the description of the statutes relating to Bankrupts being entitled to privilege of parliament, and becoming insolvent, and to prevent delay in the entering appearances in actions brought against persons having privilege of parliament," as relates to the execution of certain bonds by traders having privilege of parliament, and to the disobedience by such traders of orders for payment of money; and also an Act passed in the 46 Geo. 3, intituled "An Act to amend the laws relating to Bankrupts;" and also an Act passed in the 49 Geo. 3, intituled "An Act to alter and amend the laws relating to Bankrupts;" and also an Act passed in the 56 Geo. 3, intituled "An Act to extend the provisions of an Act of the 1 Jac. 1, intituled 'An Act for the better relief of the Creditors against such as shall become Bankrupts;'" and also so much of an Act passed in the 1 Geo. 4, intituled, "An Act to repeal so much of the several Acts passed in the 29 Eliz., 4 Geo. 1, and 5 & 8 Geo. 2, as inflicts capital punishment on certain offences therein specified, and to provide more suitable and effectual punishment for such offences," as relates to the punishment of frauds committed by Bankrupts; and also an Act passed in the 3 Geo. 4, intituled "An Act to amend the laws relating to Bankrupts under joint commissions; and also another Act passed in the 3 Geo. 4, intituled "An Act to amend the laws relating to Bankrupts;" and also another Act passed in the 5 Geo. 4, intituled "An Act to consolidate and amend the Bankrupt laws," be hereby repealed.

respects whatsoever." This act of 6 Wm. 4, is therefore to be taken in conjunction, so long as it be not in confliction therewith.

The following is a list of the statutes or parts of statutes repealed by each of the above respectively, excepting so far as they repeal others.

ENGLAND, (1st Sept., 1825).

6 *Geo.* 4, *c.* 16, *Eng.*

34 & 35 Hen. 8, c. 4.
13 Eliz., c. 7.
1 Jac. 1, c. 15.
21 Jac. 1, c. 19.
13 & 14 Car. 2, c. 24.
10 Anne, c. 15.
7 Geo. 1, c. 31.
5 Geo. 2, c. 30.
19 Geo. 2, c. 32.
24 Geo. 2, c. 57, s. 9, 10.
4 Geo. 3, c. 33.
36 Geo. 3, c. 90 (*in part.*)
37 Geo. 3, c. 124.
45 Geo. 3, c. 124, s. 1.
46 Geo. 3, c. 135.
49 Geo. 3, c. 121.
56 Geo. 3, c. 137.
1 Geo. 4, c. 115 (*in part.*)
3 Geo. 4, c. 74.
3 Geo. 4, c. 81.
5 Geo. 4, c. 98.

And the following were then unrepealed in England,

7 Anne, c. 12, s. 5.
36 Geo. 3, c. 92, ss. 5. 8.
52 Geo. 3, c. 144.
56 Geo. 3, c. 50, s. 11.
1 & 2 Geo. 4, c. 115.
3 Geo. 4, c. 39.

IRELAND, (1st July, 1836).

6 *Wm.* 4, *c.* 14, *Ir.*

11 & 12 Geo. 3, c. 8.
17 & 18 Geo. 3, c. 45.
17 & 18 Geo. 3, c. 48.
19 & 20 Geo. 3, c. 25.
21 & 22 Geo. 3, c. 40, s. 4.
21 & 22 Geo. 3, c. 59, ss. 26, 27.
26 Geo. 3, c. 25.
28 Geo. 3, c. 42, s. 1.
30 Geo. 3, c. 23.
36 Geo. 3, c. 34, s. 3.
37 Geo. 3, c. 25.
39 Geo. 3, c. 57.
40 Geo. 3, c. 21.
46 Geo. 3, c. 135 (U. K.)
49 Geo. 3, c. 121 (U. K.)

And the following were unrepealed, and still subsist in Ireland.

21 & 22 Geo. 3, c. 46.
52 Geo. 3, c. 144.
1 & 2 Geo. 4, c. 40, ss. 1, 2.
4 Geo. 4, c. 41, s. 44.
1 & 2 Wm. 4, c. 31, ss. 19, 20.
4 & 5 Wm. 4, c. 92, ss. 48 to 61.

Power of present Commissioners to cease.—Proceedings not invalidated.

II. And be it enacted, That all power, jurisdiction, and authority of the Commissioners named in any Commission of Bankrupt [which shall be subsisting at the time when this act shall take effect][1] shall cease and determine, and that every such Commission [and all such power and authority shall be and is hereby transferred to the Commissioner to be appointed by virtue of this Act][2] and all further [proceedings][3] shall be

1 & 2 Wm. 4, c. 56, § 39, Eng., *comg.* 20*th* Oct., 1831, *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

[1] [depending in the Court of Commissioners of Bankrupts in the City of London]

[2] [shall thereupon be removed into the said Court of Bankruptcy]

[3] [proceeding thereon]

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thenceforth [ ][4] carried on in like manner as if [such Commission][5] had been originally [issued by][6] the Lord Chancellor, pursuant to this Act, [to the Commissioner to be appointed by virtue of this Act:][7] *provided always, that nothing herein contained shall render invalid any [proceedings which may have been had under any Commission][8] now subsisting, or which shall [have been issued before this Act shall come into operation,][9] or affect, or lessen any right, claim, demand, or remedy, which any person now has thereunder, or upon, or against any Bankrupt, against whom any such Commission has, or shall have issued as aforesaid, except as herein specially enacted. [ ][10]

See following section, and note at foot.

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(The verbal differences are within brackets.)

[4] [prosecuted and]

[5] [they]

[6] [commenced therein by virtue of a fiat under the hand of]

[7] [save as may otherwise be directed by this Act]

*6 Geo. 4, c. 16, s. 135, Eng., *rep.* 1849.

[8] [Commission of Bankruptcy]

[9] [be subsisting at the time this Act shall take effect, or any proceedings which may have been had thereunder]

[10] [and this Act shall not extend either to Scotland or Ireland, except where the same are expressly mentioned]

Lord Lieutenant may appoint Commissioner.

III. And be it enacted, That it shall and may be lawful for the Lord Lieutenant, or other chief governor or governors of Ireland, for the time being, to appoint a fit and proper person, being a barrister at law, of not less than ten years standing at the bar, to be the Commissioner in all Commissions of Bankrupt to be issued pursuant to this Act, and to be called the Commissioner of Bankrupt; which Commissioner, so to be appointed, shall hold his office during good behaviour: provided always, that it shall be lawful for the Lord Lieutenant, or other chief governor or governors, for the time being, of Ireland, to remove such Commissioner, upon a certificate from the Lord Chancellor of some sufficient reason, to be named therein for such removal.

No corresponding section.

A second Commissioner was appointed, under 1 Vic., c. 48, s. 1, Ir., with "all and every the rights, powers, jurisdiction and authority," and "subject to all the duties of any Commissioner," &c., (s. 3); and see Introduction, p. 6, *supra*, and see 6 Geo. 4, c. 16, s. 135, Eng.

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

1 & 2 W. 4, c. 56, § 8, Eng., *comg.* 20 *Oct.* 1831, *rep. by* 12 & 13 Vic., c. 106, Eng., *from* 11 *Oct.* 1849.

[1] [In lieu of the oath directed to be taken by Commissioners under the said recited Act, every Judge and Commissioner to be appointed by virtue of this Act]

[2] [as the chief Judge or one of the Judges, or one of the Commissioners, *as the case may be*, of the Court of Bankruptcy]

[3] [any Judge or]

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All Commissions to issue to same.—His Oath.

IV. [And be it enacted, That all Commissions of Bankrupt, issued under the Great Seal of that part of the United Kingdom of Great Britain and Ireland, called Ireland, by virtue of this Act, shall be issued to the said Commissioner; and that such Commissioner][1] shall, before he shall be capable of acting in the execution of any of the powers and authorities given him by virtue of this Act, take an oath in the presence of the Lord Chancellor to the effect following; (that is to say,)

'I *A. B.*, do swear, That I will faithfully, honestly, 'and impartially, according to the best of my skill and 'knowledge, execute the several powers and trusts re-'posed to me [as Commissioner of Bankrupt,][2] and 'that without favour or affection, prejudice or malice. 'So help me GOD.'

And [the][3] Commissioner, having once taken the said oath, shall not again be required to take the same so long as he shall continue in office.

See section 3, (preceding) and note at foot. The corresponding section in margin was an alteration of 6 Geo. 4, c. 16, s. 21, Eng., *Rep.* and see 5 Geo. 2, c. 30, s. 43, Eng., *Rep.* and 11 & 12 Geo. 3, c. 8, s. 13, Ir., Rep. hereby.

No corresponding section.

Sums Payable to Commissioner.

V. And be it enacted, That in lieu of the fees now payable for like matters the said Commissioner shall receive and be paid by the agent to such Commission the sum of three pounds sterling for every sitting under such Commission, and the like sum for every conveyance executed by him, and for the signature to the Bankrupt's certificate; and the fees so payable shall, if not paid by the agent to the Commission, be charged on and paid by the assignees out of the estate of the Bankrupt; and if the Commissioner shall directly or indirectly receive from the creditors or out of the estate of the Bankrupt any further sum than as aforesaid, he shall be disabled for ever from acting as such Commissioner of Bankrupt.

See ss. 7, 8, 11, 39, 110, 111, *infra*, as to fees, and 12 & 13 Vic., c. 107, Ir., ss. 64, 65, 84, 116, *supra*, and also 1 Vic., c. 48, s. 7, Ir., whereby the fee of £3 was raised to £4.

(The verbal differences are within brackets.)

Commissioner not to practise as a Barrister, or be M.P.

VI. And be it enacted, That no [Commissioner][1] to be appointed by virtue of this Act shall during [his][2] continuance in such office practise as a barrister, or be capable of being elected a member of the house of Commons.

See 1 Vic., c. 48, s. 3, Ir., as to a second Commissioner.

Same Act, § 51.

[1] [Judge, Commissioner, registrar, or deputy registrar]

[2] [their respective]

Commissioner to pay into Bank of Ireland.

VII. And be it enacted, That the several sums directed as aforesaid to be paid to and received by the Commissioner shall be paid by him, at such times as the Lord Chancellor shall by any order direct, into the bank of Ireland, to the credit of the accountant general of the High Court of Chancery, to a separate account, to be entitled "the Bankruptcy and Compensation Fund Account;" and all monies to be so paid in to the said account shall be subject to such general orders touching the payment in, investment, accounting for, and payment out of such monies, for the purposes herein-after provided, as the Lord Chancellor shall from time to time think fit to prescribe; but the same shall not be subject to the payment of any poundage to the usher of the Court of Chancery.

See section 5, *supra*, and note at foot.

No corresponding section.

Lord Chancellor to regulate Fees.

VIII. And be it enacted, That it shall and may be lawful for the Lord Chancellor [ ][1] from time to time to settle and regulate the fees which shall be taken by

11 & 12 Geo. 3, c. 8, § 65, Ir., *rep. hereby.*

[1] [Lord Keeper, or Commissioners of the great seal in Ireland for the time being]

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(The verbal differences are within brackets.)

[2] [and persons]

[3] *The words in italics are not in the corresponding section.*

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and paid to the several officers [ ][2] concerned in the issuing and suing forth *and execution of*[3] every such Commission of Bankruptcy as aforesaid, and upon all petitions and proceedings in the execution thereof, other than such fees as are hereby ordered, *and, if he shall think fit, to direct that any of the said fees shall be paid in to the Bankruptcy and Compensation Fund account.*[3]

See section 5, *supra*, and note at foot.

Compensation to existing Commissioners.

No corresponding section.

IX. "And whereas the duties of the several persons now acting as Commissioners of Bankruptcy, and of the messenger of the Commissioners of Bankruptcy in the city of Cork, and the fees and emoluments accustomed to be received by them, will be abolished by the provisions of this Act, and it may be just and necessary that in all such cases compensation should be made in respect of such fees so to be abolished;" be it enacted, That it shall and may be lawful for the Lords Commissioners of his Majesty's treasury, by examination on oath or otherwise, which oath they and each of them are and is hereby authorized to administer, to inquire into and ascertain the annual amount of the lawful fees and emoluments of such Commissioners and messenger received by them, and to award to all and every or to such one or more of the said Commissioners, and to such messenger, as they shall deem to be entitled to the same an annuity or annuities, of such amount and for such term as the said Lords of the Treasury shall find to be a fair and reasonable compensation for the loss to be sustained by all or any of the said Commissioners or said messenger by the abolition of the said fees, and shall certify the amount of such annuities in writing under their hands to the Lord Chancellor, who shall thereupon have power to order the amount so certified

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as payable to each Commissioner and said messenger to be paid out of the monies standing to the said Bankruptcy and Compensation Fund Account; and the same shall be payable and paid accordingly to the respective persons aforesaid, without any deduction whatsoever: provided always, that the annual sum to be so payable to any Commissioner or said messenger shall not exceed two-thirds of the average annual amount of the sums received by them respectively as such Commissioners or messenger for the last three years, or such portion of that period as any of them acted as a Commissioner or messenger, and shall not be paid to any Commissioner or messenger who at any time after the commencement of this Act shall be appointed to and hold any public office or employment of an annual value greater than the annuity to be so certified as payable to him, so long as any such office or employment shall be so held.

Salary to Commissioner under this Act.

X. And be it enacted, That from and after the commencement of this Act there shall be paid and payable, out of the monies standing to the Bankruptcy and Compensation Fund Account, to the Commissioner of Bankrupt to be appointed by virtue of this Act, the yearly sum of one thousand five hundred pounds, which said sum shall be paid from time to time quarterly, free and clear of all deductions and taxes whatsoever, on the first day of September, the first day of December, the first day of March, and the first day of June in every year, by equal portions, the first payment thereof respectively to be made on the first day of September next; and that if any such Commissioner shall die, resign, or be removed, his executors or administrators, or himself, as the case may be, shall be entitled to

Corresp. Enactments.

(The verbal differences are within brackets.)

No corresponding section.

(The verbal differences are within brackets.)

receive such proportionable part of the salary as shall have accrued during the time that such Commissioner shall have executed his office since the last payment, and that the successor of such Commissioner so dying, resigning, or being removed as aforesaid shall be entitled to receive such portion of his salary as shall be accruing or shall accrue from the day of such death, resignation, or removal.

And as to salary of second Commissioner, see 1 Vic., c. 48, s. 6, Ir.

Lord Chancellor may lessen Fees, if a surplus.

XI. And be it enacted, That if at any time it shall appear to the Lord Chancellor that the monies [ ][1] standing to the said [Bankruptcy and Compensation Fund Account,][2] together with the fees expectant and to be payable to such account, shall be sufficient to answer and pay the [said salary][3] and other payments for the time being chargeable thereon, and to leave a surplus, [ ][4] it shall be lawful for the Lord Chancellor to order such abatement to be made in the fees made payable by [this Act][5] as may to the said Lord Chancellor from time to time seem just and reasonable; *and in case the sums to be produced as aforesaid, and standing to the credit of said Bankruptcy and Compensation Fund Account, shall not be sufficient to discharge the salary and other payments chargeable thereon, then such sum as shall be required to pay the same shall be charged on and paid out of the fund called "The Suitor's Fee Fund;" and such sum as shall be paid out of the said last-mentioned fund in discharge of such salary and other payments shall be repaid out of the monies and securities standing to the credit of the Bankruptcy and Compensation Fund Account, whenever there shall*

1 & 2 Wm. 4, c. 56, § 56, Eng. comg. 20 Oct. 1831; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 *Oct.* 1849.

[1] [and securities]

[2] [account to be entitled "the Secretary of Bankrupts' account"]

[3] [several salaries]

[4] [applicable to the purpose after mentioned]

[5] [the Secretary of Bankrupts, and by the said official assignees, or by either of them, to the said account, to be entitled "the Secretary of Bankrupts' account"]

[6] *The words in italics are not in the corresponding section.*

be a surplus thereof after discharging the salary and payments chargeable thereon.[6]

See section 5, *supra*, and note at foot, and see 12 & 13 Vic., c. 107, s. 116, Ir., p. 118, *supra*.

Commissioner to sit the whole year.

XII. And be it enacted, That the said Commissioner shall sit for the dispatch of business at all times, Sundays, Christmas Day, and Good Friday alone excepted, when the business of the said Commissioner of Bankruptcy shall require it; and that if, from sickness or other reasonable cause, to be allowed by the Lord Chancellor, he be absent, then and in every such case it shall and may be lawful for the Lord Chancellor to appoint a person, being a Barrister at Law of not less than ten years standing, to perform the duties of such Commissioner during such absence, upon taking the oath herein-before prescribed for the Commissioner, to be appointed by virtue of this Act; and every such person so appointed to perform the duty of such Commissioner as aforesaid shall, during the continuance of such deputation or appointment, have all and every the rights, powers, and authorities, and be subject to all the duties of such Commissioner under this Act; and every such person, who shall be so appointed to act during the absence of such Commissioner, as aforesaid, shall receive from the said Bankruptcy and Compensation Fund Account such proportion, and no more, of the salary of such Commissioner for and during the period of his service, as shall be directed by the deputation under which he shall be so appointed, and the residue only shall for such period be payable to such Commissioner.

As to fee for sitting (£4 instead of £3), see 1 Vic., c. 48, s. 7. Ir. The following is from Lord Eldon's General Orders, dated 13th April, 1815: "Whereas the keeping of holidays in the office of the Secretary of Bankrupts, hath been found inconvenient; I do therefore order, that from and after the date hereof, no holidays

(The verbal differences are within brackets.)

No corresponding section.

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[6] *The words in italics are not in the corresponding section.*

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(The verbal differences are within brackets.)

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shall be kept in the said office, except Christmas Day, Good Friday, and days appointed by proclamation for general thanksgiving or fast, and that the said office be kept open from ten o'clock in the morning until three in the afternoon, and from six till eight in the evening," &c.

No corresponding section.

Sittings and Meetings in Dublin—Appointment of Register.

XIII. And be it enacted, That it shall be lawful for the Lord Chancellor to appoint a place in Dublin where the Commissioner shall sit, and that as well all sittings fixed by the Commissioner under Commissions of Bankruptcy, as also all meetings of Creditors under Commissions, which are held in pursuance of public advertisement, shall be holden at such place, and that until such place shall be appointed, such sittings and meetings shall be held at the Royal Exchange at Dublin; and that it shall and may be lawful for the Lord Chancellor, if he shall think it necessary for the proper discharge of the business of such Court, to appoint some proper person to act as register of the said Court, and to direct, that a salary not exceeding three hundred pounds per annum shall be paid to him out of the said Bankruptcy and Compensation Fund, and from time to time to remove such register, if he shall think fit, and on his removal, or on his resignation or death, to appoint another person in his place.

And as to appointment of assistant registrar, see 1 Vic., c. 48, s. 8, Ir., and as to continuation in office, removal, &c., see 12 & 13 Vic. c. 107, s. 66, Ir., as to his duties, ss. 75, 100, and 117 of same.

1 & 2 W. 4, c. 56, § 11, Eng., *comg.* 20 *Oct.* 1831, *rep. by* 12 & 13 Vic., c. 106, Eng., *from* 11 *Oct.* 1849.

[1] [the judges of the said Court of Record, with the consent of the]

[2] [of the said Court of Bankruptcy the sittings of the Judges and Commissioners thereof]

Lord Chancellor may make Rules.

XIV. And be it enacted, That [the][1] Lord Chancellor shall have power from time to time, to make general rules and orders for regulating the practice [and sittings of the said Commissioner,][2] and the conduct of the other officers and [persons concerned

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in the suing out or execution of Commissions of Bankrupt.][3]

See 12 & 13 Vic., c. 107, s. 70, Ir., by which the Commissioners are empowered to make General Rules and Orders "from time to time subject to the sanction and confirmation of the Lord Chancellor."—(p. 147, *ante.*)

Commissioner not liable to actions.

XV. And be it enacted, That no Commissioner to be appointed by virtue of this Act, shall be liable to any action for any thing done by him in the execution of the duties and powers given to him as such Commissioner, by virtue of this Act.

See 1 Vic., c. 48, s. 3, Ir., as to second Commissioner.

Attornies and Solicitors may practise.

XVI. And be it enacted, That all attornies and solicitors of any of the superior courts of law or equity at [Dublin][1] may appear and [act as such][2] in any proceedings [before the Commissioner to be appointed by virtue of this Act,][3] without being required to employ [counsel;][4] and in case any person not being an attorney or solicitor [ ][5] as aforesaid, shall practise [before the Commissioner in any such proceedings][6] as an attorney or solicitor, he shall be deemed guilty of a contempt of Court, and shall be liable to all the penalties [consequent thereon;][7] and that all the laws and statutes now in force concerning attornies and solicitors shall extend, *so far as the same may be applicable*, to attornies and solicitors practising [before the Commissioner as aforesaid.][6]

As to incapacity of acting while an officer of the Court, see 12 & 13 Vic., c 107, s. 117, Ir., and as to taxation of costs, see 75 of same, pp. 186 and 150 respectively.

Former Provisions applicable to this Act.

XVII. And be it enacted, That all the laws and statutes [not hereby repealed, and rules and orders in

Corresp. Enactments.

(*The verbal differences are within brackets.*)

[3] [of the practitioners therein]

No corresponding section.

Same Act, § 10, *re-enacted* § 247 *of same.*

[1] [Westminster, may be admitted and have their names enrolled in the said Court of Bankruptcy, without any fee or charge other than such as shall be allowed by this Act, or any rule or regulation to be made in pursuance thereof, and]

[2] [plead]

[3] [in the said court]

[4] [counsel; (except in proceedings before the said Court of Review, and upon the trial of issues by jury;)]

[5] [duly admitted]

[6] [in the said Court of Bankruptcy]

[7] [incident thereto, on complaint thereof made to the Court of Review]

Same Act, § 16.

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(The verbal differences are within brackets.)

[1] [Rules and orders now in force]

[2] [such Commissions]

[3] [Fiats]

[4] [as if every Fiat were a Commission of Bankrupt under the great seal of the United Kingdom of Great Britain and Ireland]

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force before this Act shall come into operation][1] relating to Bankrupts, or to Commissioners of Bankrupts, or to proceedings under [Commissions of Bankrupt,][2] or to the subject matters of such proceedings, or to the persons concerned therein or in any way affected thereby, shall in like manner extend and be construed to extend in every respect, as far as the same may be applicable, to this Act, and to [Commissions][3] issued in pursuance thereof, and to all proceedings under the same, and to all the subject matters of such proceedings, and to all persons concerned therein or in any way affected thereby, to all intents and purposes whatsoever [ ],[4] save and except as may otherwise be directed by this Act.

See 12 & 13 Vic., c. 107, s. 2, Ir., p. 82, *supra.*

6 Geo. 4, c. 16, § 2, Eng., comg. 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted* § 65, *of same.*

Who are deemed Traders—who not Traders.

XVIII. And be it enacted, That all bankers, brokers, and persons using the profession or trade of scrivener, receiving other men's monies or estates into their trust or custody; and persons insuring ships or their freight or other matters against perils of the sea; warehousemen, wharfingers, packers; builders, carpenters, shipwrights; victuallers, keepers of inns, taverns, hotels or coffee houses; dyers, printers, bleachers, fullers, calenderers; cattle or sheep salesmen; and all persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, and all persons who, either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become Bankrupt: provided that no farmer, grazier, common labourer or workman for hire, receiver general of the taxes, or member of or subscriber to any incorporated commercial or trading companies established by charter, or *under or registered in pursuance of*[1] Act of Parliament, shall be deemed, as such, a trader liable by virtue of this Act to become Bankrupt.

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding section.*

And now see 12 & 13 Vic., c. 107, s. 10, Ir., and see alphabetical list, p. 17, *ante.*

Acts of Bankruptcy.

XIX. And be it enacted, That if any such trader shall depart this realm, or, being out of this realm, shall remain abroad, or depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested for any debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods, monies, or chattels to be attached, sequestered, or taken in execution, or *shall*[1] make or cause to be made, either within this realm or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make or cause to be made any fraudulent surrender of any of his copyhold lands or tenements, *situate in England or Ireland or elsewhere,*[1] or make or cause to be made any fraudulent gift, delivery, or transfer of any of his goods or chattels, every such trader, doing, suffering, procuring, executing, permitting, making or causing to be made any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his Creditors, shall be deemed to have thereby committed an act of Bankruptcy.

Same Act, § 3. *re-enacted* § 67 *of same.*

[1] *The words in italics are not in the corresponding section.*

This and the preceding section of 6 Geo. 4 *were taken from* 18 Eliz., c. 7, § 1; 1 Jac. 1, c. 15, § 2; 21 Jac. 1, c. 19, § 2, *all rep. thereby.* *See also* 11 & 12 Geo. 3, c. 8. § 1, *Ir. hereby repealed.*

See as to further acts of Bankruptcy, ss. 20, 21, 22, 24, 26, 27, *post,* and 12 & 13 Vic., c. 107, ss. 13, 14, 15, 20, 22, 23, 24, and see acts of Bankruptcy, c. 2, p. 29, *ante.*

Conveyance to Trustees, how far an Act of Bankruptcy.

XX. And be it enacted, That where any such trader shall, after this Act shall have come into effect, execute

Same Act, § 4, *re-enacted* § 68 *of same.*

(The verbal differences are within brackets.)

any conveyance or assignment by deed to a trustee or trustees of all his estate and effects for the benefit of all the Creditors of such trader, the execution of such deed shall not be deemed an act of Bankruptcy unless a Commission issue against such trader within six calendar months from the execution thereof by such trader; provided that such deeds shall be executed by every such trustee within fifteen days after the execution thereof by the said trader, and that the execution by such trader and by every such trustee be attested by an attorney or solicitor, and that notice be given within two months after the execution thereof by such trader, in case such trader resides in [Dublin][1] or within forty miles thereof, in the [Dublin][1] Gazette, and also in two [Dublin][1] daily newspapers, and in case such trader does not reside within forty miles of [Dublin],[1] then in the [Dublin][1] Gazette, and also in one [Dublin][1] daily newspaper, and one provincial newspaper published near such trader's residence; and such notice shall contain the date and execution of such deed, and the name and place of abode respectively of every such trustee and of such attorney or solicitor.

[1] [London]

This enactment was new in England.

See notes to last section, and p. 45, *ante*.

Lying in Prison Twenty-one Days.

6 Geo. 4, c. 16, § 5 Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 69 *of same, from* 11 Oct. 1849.

XXI. And be it enacted, That if any such trader, having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall, upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or, having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him and not discharged, every such trader shall be thereby deemed to have committed an act of Bankruptcy; or if any such trader, having

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been arrested, committed, or detained for debt, shall escape out of prison or custody, every such trader shall be deemed to have thereby committed an act of Bankruptcy from the time of such arrest, commitment, or detention; provided that if any such trader shall be in prison at the time of the commencement of this Act such trader shall not be deemed to have committed an act of Bankruptcy by [being][1] in prison until he shall have lain in prison for the period of two months.

See section 20, *supra*, with note at foot, and p. 48, *ante*.

Filing a Declaration of Insolvency.

XXII. And be it enacted, That if any such trader shall file in the office of the Lord Chancellor's Secretary of Bankrupts a declaration in writing, signed by such trader, and attested by an attorney or solicitor, that he is insolvent, or unable to meet his engagements, the said Secretary of Bankrupts shall sign a memorandum that such declaration hath been filed, which memorandum shall be authority for the printer of the [Dublin Gazette][1] to insert an advertisement of such declaration therein; and every such declaration shall, after such advertisement inserted as aforesaid be an act of Bankruptcy committed by such trader at the time when such declaration was filed; but no Commission shall issue thereupon unless it be sued out within two calendar months next after the insertion of such advertisement, and unless such advertisement shall have been inserted in the [Dublin Gazette][1] within eight days after such declaration was filed; and no docket shall be struck upon such act of Bankruptcy before the expiration of four days next after the insertion of such advertisement; [ ][2] and the Gazette containing such advertisement shall be evidence to be received of such declaration having been filed.

See section 20, *supra*, with note at foot, and see p. 101, *ante*.

Corresp. Enactments.

(The verbal differences are within brackets.)

[1] [lying]
This was taken from 1 Jac. 1, c. 15, § 2, Eng., *and* 21 Jac 1, c. 19, § 2, Eng., *both rep. thereby.*

Same Act, § 6. *altered by* 5 & 6 *Vic. c.* 122, § 22, *Eng. and re-enacted, so altered*, § 70 *of Consol. Act*, 1849, *Eng.*

See 12 & 13 *V. c.* 107, § 22, *Ir. and notes at foot of p.* 101, *ante.*

[1] [London Gazette]

[2] [in case such Commission is to be executed in London, or before the expiration of eight days next after such insertion, in case such Commission is to be executed in the country,]

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

6 Geo. 4, c. 16, § 7, Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng. *from* 11 Oct. 1849.

Verbatim.

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Declaration Concerted.

XXIII. And be it enacted, That no Commission under which the adjudication shall be grounded on the act of Bankruptcy being the filing of such declaration shall be deemed invalid by reason of such declaration having been concerted or agreed upon between the Bankrupt and any Creditor or other person.

Same as 6 Geo. 4, c. 16, s. 7, Eng. This provision was still further extended to concerted Commissions between Bankrupt, his agent, &c., and petitioning creditor, his agent, &c., see s. 156, *post*, taken from 1 & 2 Wm. 4, c. 56, s. 42, Eng., *Rep.*

Same Act, § 8, *re-enacted* § 71 *of same*.

Compounding with Petitioning Creditor.

XXIV. And be it enacted, That if [any][1] trader liable by virtue of this act to become Bankrupt shall, after a docket struck against him, pay to the person or persons who struck the same, or any of them, money, or give or deliver to any such person [any such][2] satisfaction or security for his debt or any part thereof whereby such person may receive more in the pound in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction, or security shall be an act of Bankruptcy; and if any Commission shall have issued upon the docket so struck as aforesaid the Lord Chancellor may either declare such Commission to be valid, and direct the same to be proceeded in, or may order it to be superseded, and a new Commission may issue; and such Commission may be supported either by proof of such last-mentioned or of any other act of Bankruptcy; and every person so receiving such money, gift, delivery, satisfaction, or security as aforesaid, shall forfeit his whole debt, and also repay or deliver up such money, gift, satisfaction, or security as afoesaid, or the full value thereof, to such person or persons as the Commissioner acting under such original Commission or any new Commission shall appoint, for the benefit of the Creditors of such Bankrupt.

See section 20, *supra*, with note at foot thereof. See 11 & 12 Geo. 3, c. 8, s. 10, Ir., hereby repealed.

This section of Geo. 4, *was in substance a re-enactment of* 5 Geo. 2, c. 30, § 24, *Rep. thereby.*

[1] [any such]

[2] [any]

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Corresp. Enactments.

(The verbal differences are within brackets.)

Traders, (M. P.'s) treated as other Traders.

XXV. And be it enacted, That if any such trader having privilege of Parliament shall commit any of the aforesaid acts of Bankruptcy, a Commission [ ][1] may issue against him, and the [Commissioner][2] and all other persons acting under such Commission may proceed thereon in like manner as against other Bankrupts, but such person shall not be subject to be arrested or imprisoned during the time of such privilege, except in cases hereby made felony.

This section refers to 52 Geo. 3, c. 144, U. K., left subsisting after the passing of both 6 Geo. and 6 Wm. 4, as will appear on reference to p. 200, *ante.* See 17 & 18 Geo. 3, c. 48, s. 5, Ir., hereby repealed.

Same Act, § 9, *re-enacted in substance* § 66 *of same.*

[1] [of Bankrupt]

[2] [Commissioners]

This section of Geo. 4 was in substance a re-enactment of 4 Geo. 3, c. 33, § 3, Eng., *rep. thereby.*

M. P. not Paying, &c., on Summons, &c.

XXVI. And be it enacted, That if any creditor or creditors of any such trader having privilege of Parliament to such amount as is hereinafter declared requisite to support a Commission, shall file an affidavit or affidavits in any Court of Record [in Dublin][1] that such debt or debts is or are justly due to him or them respectively, and that such debtor, as he or they verily believe, is such trader as aforesaid, and shall sue out of the same Court a summons, or an original bill and summons, against such trader, and serve him with a copy of such summons, if such trader shall not within one calendar month after personal service of such summons pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or enter into a bond in such sum, and with two sufficient sureties, as any of the judges of the Court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action or actions, together with such costs as shall be given in the same, and within one calendar month next after personal service of such summons cause an appearance or appearances to be

Same Act, § 10, *re-enacted* § 77 *of same.*

[1] [at Westminster]

(The verbal differences are within brackets.)

entered to such action or actions in the proper Court or Courts in which the same shall have been brought, every such trader shall be deemed to have committed an act of Bankruptcy from the time of the service of such summons, and any creditor or creditors of such trader to such amount as aforesaid may sue out a Commission against him, and proceed thereon in like manner as against other Bankrupts.

This was taken from 4 Geo. 3, c. 33, § 1, Eng., *and* 45 Geo. 3, c. 124, § 1, Eng., *both rep. thereby.*

See section 20, *supra*, with note at foot thereof.

M. P's disobeying orders of court.

6 Geo. 4, c. 16, § 11, Eng. *comg.* 1 *Sept.* 1825, *rep. by* 12 & 13 Vic. c. 106, Eng. *from* 11 Oct. 1849.

XXVII. And be it enacted, That if any decree or order shall have been pronounced in any cause *or matter*[1] depending in any court of equity [ ][2] against any such trader having privilege of parliament, ordering such trader to pay any sum of money, and such trader shall disobey, the same having been duly served upon him, the person or persons entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof, pursuant to such decree or order, may apply to the Court, by which the same shall have been pronounced, to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such trader, being personally served with such last-mentioned order eight days before the day therein appointed for payment of such money, shall neglect to pay the same, he shall be deemed to have committed an act of Bankruptcy from the time of the service thereof, and any such Creditor or Creditors as aforesaid, may sue out a Commission against him, and proceed thereon in like manner as against other Bankrupts.

This was taken from 45 Geo. 3, c. 124, § 7, Eng., *how far repealed, see* 6 Geo. 4, c. 16, § 1, Eng., *p.* 199 *ante.*

Provisions of 52 *Geo. III.*, c. 114, *extended to this Act.*

No corresponding section.

XXVIII. And be it enacted, That the provisions of an Act passed in the fifty-second year of the reign of

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[1] *The words in italics are not in the corresponding section.*

[2] [or any order made in any matter of Bankruptcy or Lunacy]

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King George the Third, intituled, "An Act to suspend and finally vacate the seats of members of the House of Commons who shall become Bankrupts, and who shall not pay their debts in full within a limited time," shall extend, as far as the same may be applicable, to every Commission to be issued, and to the Commissioner to be appointed by virtue of this Act.

(The verbal differences are within brackets.)

This section refers to 52 Geo. 3, c. 144, U. K., left subsisting after the passing of both 6 Geo. 4, and 6 Wm. 4, as will appear on reference to p. 200, *ante*.

Power to Lord Chancellor to issue Commission.

Same Act, § 12.

XXIX. And be it enacted, That the Lord Chancellor shall have power, upon petition made to him in writing, against any trader having committed any act of Bankruptcy, by any Creditor or Creditors of such trader *whose debt or debts shall amount to the sum or sums herein-after mentioned*,[1] [to issue a][2] Commission under the great seal [of that part of the United Kingdom of Great Britain and Ireland called Ireland, to the Commissioner to be appointed as herein-before mentioned,][3] who shall, by virtue of this Act and of such Commission, have full power and authority to take such order and direction with the body of such Bankrupt, as herein-after mentioned, as also with all his lands, tenements, and hereditaments, both within the realm and abroad, as well copy or customaryhold as freehold, *whether in England, Ireland, or elsewhere*,[1] which he shall have in his own right before he became Bankrupt, as also with all such interest in any such lands, tenements, and hereditaments, as such Bankrupt may lawfully depart with, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize, and debts, wheresoever they may be found or known, and to make sale thereof, in manner herein-after mentioned, or otherwise order the same for

[1] *The words in italics are not in the corresponding section.*

[2] [by]

[3] [to appoint such persons as to him shall seem fit,]

This was taken from 18 Eliz. c. 7, § 2, Eng., *rep. thereby.*

(The verbal differences are within brackets.)

satisfaction and payment of the Creditors of the said Bankrupt.

This section gave the Lord Chancellor a power of "issuing a Commission under the Great Seal," &c., which empowers the Commissioner to hold jurisdiction over the defaulting trader's estate, &c., and upon the proper requisites being fulfilled, to *adjudge* him a Bankrupt, &c., and hence the name "Commission of Bankrupt," (in England under 1 & 2 Wm. 4, c. 56, s. 12, "a fiat," and now by s. 89 of Consol. Act, 1849, Eng., a "petition" alone.)

Petitioning Creditor's Affidavit and Bond.

6 Geo. 4, c. 16, § 13, Eng., *comg.* 1 Sep. 1825, *rep. by* 12 & 13 Vic., c. 106, Eng., *not re-enacted.*

XXX. And be it enacted, That the petitioning Creditor shall, before any Commission be granted, make an affidavit in writing before a master, ordinary, or extraordinary, in Chancery, (which shall be filed with the proper officer,) of the truth of such his or their respective debt or debts, and shall likewise give bond to the Lord Chancellor in the penalty of two hundred pounds, to be conditioned for proving his or their debt or debts, as well before the Commissioner as upon any trial at law, in case the due issuing forth of the Commission be contested, and also for proving the party to have committed an act of Bankruptcy at the time of taking out such Commission, and to proceed on such Commission; but if such debt or debts shall not be really due, or if after such Commission taken out it be not proved that the party had committed an act of Bankruptcy at the time of issuing the Commission, and it shall also appear that such Commission was taken out fraudulently or maliciously, the Lord Chancellor shall and may, upon petition of the party or parties against whom the Commission was so taken out, examine into the same, and order satisfaction to be made to him or them for the damage by him or them sustained, and for the better recovery thereof, may [sign][1] such bond or bonds to the party or parties so petitioning, who

The provisions herein were taken from 5 Geo. 2, c. 30, Eng., *rep. thereby.*

[1] [assign]

may sue for the same in his and their name and names.

The Bond is now dispensed with, see s. 8 of 12 & 13 Vic. c. 107, Ir., and notes at foot, page 82, *ante*. See 11 & 12 Geo. 3, c. 8, s. 9, Ir., rep. hereby.

Petitioning Creditor to sue forth Commission at his own expense.—Costs how taxed.

XXXI. And be it enacted, That the petitioning Creditor or Creditors shall, at his or their own costs, sue forth and prosecute the Commission until the choice of assignees; and the Commissioner[1] shall at the meeting for such choice ascertain such costs, and by writing under his hand direct the [same to be paid to][2] such petitioning Creditor or Creditors [out of the][3] monies that shall be got in under the Commission; and all bills of fees or disbursements of any solicitor or attorney employed under any Commission, for business done after the choice of assignees, shall be settled by the Commissioner, except that so much of such bills as contain any charge respecting any action at law or suit in equity shall be settled by the proper officer of the Court in which such business shall have been transacted, and the same so settled shall be paid to such solicitor or attorney; provided that any Creditor who shall have proved to the amount of twenty pounds or upwards, if he be dissatisfied with such settlement by the Commissioner, may have any such costs and bills settled by a Master in Chancery.

As to proceeding with Commission within three days, (heretofore eight days, under Rule 2 of Sir E. Sugden's Rules and Orders of 1843, and see p. 60, *ante*) see 12 & 13 Vic. c. 107, Ir., p. 105, *ante*, and note at foot. As to choice of assignees, see s. 72 of this Act, *post*. Who to vote thereat, and how chosen, *ibid.* What interest they take, and how, ss. 74 & 76. Effect of death or removal and successor, ss. 75 & 77. Notice thereon in Gazette, s. 80. No abatement on same, s. 81. But now as to removal under Commissioner, see 12 & 13 Vic. c. 107, Ir., s. 77, and effect thereof, ss. 78, 79 of same, p. 151, *et seq. ante*. As to appointment of Provisional, see s. 55 of this Act, *post*. But now as to Official, see s. 28, *et seq.* of 12 & 13 Vic. c. 107, Ir., p. 109, *ante*, and

(The verbal differences are within brackets.)

Same Act, § 14, *re-enacted* § 114 *of same.*

[1] *The word* "Commissioner" *and all words governed by or relative to it, are in the plural number throughout this corresponding section.*

[2] [assignees (who are hereby thereto required) to reimburse]

[3] [such costs out of the first]

This was taken from 5 Geo. 2, c. 30, § 25, *rep. thereby.*

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

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their duties, ss. 80 to 87 of same; and see Rules concerning same, dated 1st of November, 1849, *post.*' As to official assignees now in England, see Consol. Act, 1849, Eng., ss. 38 to 45. As to assignees generally, see ch. 7, p. 71, *ante.*

Petitioning Creditor's Debt.

6 Geo. 4, c. 16, § 15, Eng., *comg.* 1 Sep. 1825; *altered by* 5 & 6 Vic. c. 122, Eng.; *rep. and so re-enacted by* 12 & 13 Vic., c. 106, Eng. § 91 *of same,* 11 Oct. 1849.

Verbatim.

This was copied from 5 Geo. 2, c. 30, §§ 22, 23, Eng., *rep. thereby.*

XXXII. And be it enacted, That no such Commission shall be issued unless the single debt of such Creditor, or of two or more persons being partners, petitioning for the same, shall amount to one hundred pounds or upwards, or unless the debt of two Creditors so petitioning shall amount to one hundred and fifty pounds or upwards, or unless the debt of three or more Creditors so petitioning shall amount to two hundred pounds or upwards; and that every person who has given credit to any trader for valuable consideration for any sum payable at a certain time, which time shall not have arrived when such trader committed an act of Bankruptcy, may so petition or join in petitioning as aforesaid, whether he shall have any security in writing or otherwise for such sum or not.

Under 12 & 13 Vic., c. 107, s. 9, Ir., reduced to £50, £70 and £150 respectively, p. 89, *ante*; see also ch. 3, p. 53, and ch. 5, p. 58, *ante.*

Joint Commissions against Partners.

Same Act, § 16, *re-enacted* § 97 *of same.*

[1] [entitle]

XXXIII. And be it enacted, That any Creditor or Creditors whose debt or debts is or are sufficient to [enable][1] him or them to petition for a Commission against all the partners of any firm may petition for a Commission against one or more of the partners of such firm; and every Commission issued upon such petition shall be valid although it does not include all the partners of the firm; and in every Commission against two or more persons it shall be lawful for the Lord Chancellor to supersede such Commission as to one or more of such persons, and the validity of such Commission

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shall not be thereby affected as to any person as to whom such Commission is not ordered to be superseded, nor shall any person's certificate be thereby affected.

The corresponding section was taken from 8 Geo. 4, c. 74, s. 1, Eng., and 8 Geo. 4, c. 81, s. 8, Eng., both repealed by 6 Geo. 4, above.

Second or other Commissions may be separate or in conjunction.

XXXIV. And be it enacted, That if after a Commission issued against two or more members of a firm any other Commission or Commissions shall be issued against any other member or members of such firm [ ][1] immediately after the adjudication under such other Commission or Commissions [ ],[2] all the estate, real and personal, of such person or persons declared bankrupt under such other Commission or Commissions shall become vested in and transferred to the assignees under the first Commission or Commissions, in the same manner as if they had been appointed assignees under such other Commission or Commissions, according to the provisions of this Act, and all separate proceedings under such Commission or Commissions shall be stayed; and such Commission or Commissions shall, without affecting the validity of the first Commission, be annexed to and form part of the same: provided always, that the Lord Chancellor may direct such Commission or Commissions to be proceeded on, either separately or in conjunction with the first Commission.

Same Act, § 17, *re-enacted in substance* § 98 *of same.*

[1] [such other Commission or Commissions shall be directed to the Commissioners to whom the first Commission was directed, and]

[2] [the Commissioners shall convey and assign]

The corresponding section was taken from 8 Geo. 4, c. 81, s. 9, Eng. rep.

If Petitioning Creditor's Debt be Insufficient.

XXXV. And be it enacted, That if after adjudication the debt or debts of the petitioning Creditor or Creditors, or any of them, be found insufficient to sup-

Same Act, § 18, *re-enacted in substance*, § 103 *of same.*

(The verbal differences are within brackets.)

Verbatim.

port the Commission, it shall be lawful for the Lord Chancellor, upon application of any other Creditor or Creditors having proved any debt or debts sufficient to support a Commission, provided such debt or debts has or have been incurred not anterior to the debt or debts of the petitioning Creditor or Creditors, to order the said Commission to be proceeded in, and it shall by such order be deemed valid.

See 12 & 13 Vic. c. 107, ss. 8, 9. 25, Ir., pp. 89 and 105 respectively.

Not Invalid by reason of prior Act of Bankruptcy.

6 Geo. 4, c. 16, § 19, *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

Verbatim.

XXXVI. And be it enacted, That no Commission shall be deemed invalid by reason of any act or acts of Bankruptcy prior to the debt or debts of the petitioning Creditor or Creditors, or any of them, provided there be a sufficient act of Bankruptcy subsequent to such debt or debts.

Altered by 12 & 13 Vic. c. 107, s. 7, Ir., page 88, *ante*, by twelve months' limitation as to Act of Bankruptcy, and also by s. 8 of same, by allowing creditor to petition, whether Act of Bankruptcy prior or subsequent to debt.

Commissioner may Summon Persons, &c., Adjudication.

Same Act, § 24, *re-enacted in substance,* § 101 *of same.*

XXXVII. And be it enacted, That it shall *and may*[1] be lawful for the [Commissioner][2] by writing under his hand,[3] to summon before him any person whom he shall believe capable of giving any information concerning the trading or any act or acts of Bankruptcy committed by the person or persons against whom such Commission is issued, and also to require any person so summoned to produce any books, papers, deeds, writings, and other documents in the possession, custody, or power of such person which may appear to the said Commissioner[3] to be necessary to establish any such

[1] *The words in italics are not in the corresponding section.*

[2] [Commissioners after they shall have taken such oath as aforesaid]

[3] *The word* "Commissioner" *and all words relative to or governed by it are in the plural number throughout this corresponding section.*

(The verbal differences are within brackets.)

trading or act or acts of Bankruptcy; and it shall be lawful for the said Commissioner[3] to examine any such person upon oath, by word of mouth or interrogatories in writing, concerning the trade of or any act or acts of Bankruptcy committed by the person or persons against whom such Commission shall have issued; and every such person so summoned shall incur such danger or penalty for not coming before the Commissioner, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the said Commissioner, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is hereby provided as to persons summoned after the adjudication of Bankruptcy; and the Commissioner upon oath made before him of the petitioning Creditor's debt or debts, and of the trading or act or acts of Bankruptcy of the person or persons against whom such Commission is issued, shall thereupon adjudge such person or persons Bankrupt.

[3] *The word* "Commissioner" *and all words governed by or relative to it, are in the plural number throughout this corresponding section.*

Taken from 5 Geo. 2, c. 30, s. 16, Eng., 3 Geo. 4, c. 81, s. 1, Eng., *both rep. thereby.*

Commissioners now empowered, if person in prison or custody, 12 & 13 Vic. c. 107, s. 82, Ir., p. 155, *ante.* For power to summon *after* adjudication, see ss. 46, 47 of this Act, *post*, and their costs, s. 48 of same. See 11 & 12 Geo. 3, c. 8, § 29, Ir., rep. hereby.

Two Sittings to Surrender.

XXXVIII. And be it enacted, That the Commissioner[1] after he shall have adjudged as aforesaid, shall forthwith cause notice to be given in the [Dublin][2] Gazette, and shall thereby appoint two or more public sittings for the Bankrupt to surrender and conform, the last of which sittings shall be on the forty-second day hereby limited for such surrender.

Same Act, § 25, *altered by* 1 & 2 W. 4, c. 56, § 20, Eng. *rep.; re-enacted in substance*, § 104 *of same.*

[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

[2] [London]

This was taken from 5 Geo. 2, c. 30, § 2, Eng., *rep. thereby.*

Not surrendering "before three of the clock on the forty-second day after notice," &c., see s. 130 of this Act, *post.* But now see 12 & 13 Vic. c. 107, s. 44, Ir., p. 123, *ante*, "before three of the clock on the day limited for the surrender of such Bankrupt," &c., and see notes at foot thereof.

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6 Geo. 4, c. 16, § 26, Eng.; *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic, c. 106, Eng. *the last clause re-enacted* § 116 *of same, from* 11 Oct. 1849.

[1] [no Commission shall abate by reason of a demise of the Crown, and (if by reason of the death of Commissioners, or for any other cause, it become necessary) [any Commission may be renewed, but]

[2] [the same]

[3] [Commissioners]

[4] [they]

If Abatement by Demise of Crown, (or Death, &c., of Commissioner) Half Fees.

XXXIX. And be it enacted, That [if by reason of the demise of the crown, or of the death, resignation, or removal of the Commissioner, it shall become necessary to renew any Commission,][1] only half the fees usually payable upon obtaining Commissions shall be paid for [such renewed Commission];[2] and if any Bankrupt shall die after adjudication the [Commissioner][3] may proceed in the Bankruptcy as [he][4] might have done if such Bankrupt were living.

By 1 Vic. c. 48, s. 18, Ir., Commissions no longer abate by demise of the Crown, or by removal, death or resignation of a Commissioner, see the Act, *post*, and also s. 5 of this Act, *ante*, and note thereto.

Same Act, § 27, *re-enacted* § 109 *of same.*

[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

Messenger may break open doors, &c.

XL. And be it enacted, That it shall be lawful for any person appointed by the Commissioner[1] by his warrant under his[1] hand and seal, to break open any house, chamber, shop, warehouse, door, trunk, or chest of any Bankrupt where such Bankrupt or any of his property shall be reputed to be, and seize upon the body or property of such Bankrupt; and if the Bankrupt be in prison or in custody it shall be lawful for the person so appointed as aforesaid to seize any property (his necessary wearing apparel only excepted) in the custody or possession of such Bankrupt, or of any other person in any prison or place where such Bankrupt is in custody.

See ss. 41 to 45, and also s. 154 of this Act, and 1 Vic. c. 48, ss. 9 and 10 repealing said s. 154. See also 12 & 13 Vic. c. 107, s. 50, Ir., p. 181, *ante*, and note at foot, as to obstructing messenger. See Consol. Act, 1849, s. 106, Eng.

Same Act, § 28, *re-enacted* § 110 *of same.*

[1] [Commissioners]

Messenger may Seize Goods in England.

XLI. And be it enacted, That it shall be lawful for the person so appointed by the [Commissioner][1] as aforesaid to break open any house, chamber, shop, warehouse, door, trunk, or chest of such Bankrupt in [England][2] where any of the property of such Bankrupt shall be reputed to be, and seize the same, provided the execution of such warrant [by the Commissioner][3] shall be verified [by the][4] oath [of the person thereby appointed before a justice of peace residing in the county where such property shall be reputed to be],[5] and provided that the person thereby appointed shall before [such justice][6] depose upon oath that he is the person named in such warrant.

See preceding section and note.

(The verbal differences are within brackets.)

[2] [Ireland]

[3] [as aforesaid]

[4] [upon]

[5] [by the attorney or solicitor suing out the Commission before the Mayor or other Chief Magistrate of the city, borough or town corporate, where or near to which the said Commission is executed and verified under the common seal thereof, or the seal of the office of such Mayor or other Magistrate]

[6] [a Justice of Peace residing in the county where such property shall be reputed to be]

Search Warrant.

XLII. And be it enacted, That in all cases where it shall be made to appear to the satisfaction of any justice of peace in England or Ireland, that there is reason to suspect and believe that property of the Bankrupt is concealed in any house, premises, or other place not belonging to such Bankrupt, such justice of peace is hereby directed and authorized to grant a search warrant to the person so deputed by the [Commissioner][1] as aforesaid, and it shall be lawful for such person to execute the same in like manner and such person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen and concealed.

See the two preceding sections, and 12 & 13 Vic. c. 107, s. 42, Ir., and notes at foot, p. 120, *ante.* This was new, the 11 & 12 Geo. 3, c. 8, s. 42, Ir., rep. hereby, did not extend to Eng.

Same Act, § 29, *extended by* 5 & 6 Vic. c. 122. s. 80, Eng., *both rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted* s. 106 *of same, from* 11 *Oct.* 1849.

[1] [Commissioners]

This was new in England.

Execution of such Warrant in Scotland.

XLIII. And be it enacted, That if in the execution of any warrant of seizure so granted by the [Commissioner][1] as aforesaid it shall be necessary to break open any house, chamber, shop, warehouse, door, trunk, or

Same Act, § 30, *re-enacted* § 111 *of same.*

[1] [Commissioners]

(The verbal differences are within brackets.)

chest of any such Bankrupt in Scotland where any of the property of such Bankrupt shall be reputed to be, or to seize and get possession of such property, such warrant, after [the execution thereof by the Commissioner, and the identity of the person named therein, shall have been verified][2] upon oath as aforesaid, may be backed or indorsed with the name of a judge ordinary or justice of the peace in Scotland, who are hereby required, within their respective jurisdictions, to back or indorse the same; and such warrant so indorsed shall be sufficient authority to the person bringing such warrant, and to all officers of the law in Scotland, to execute the same within the county or burgh wherein it is so indorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door, trunk, or chest of such Bankrupt, and to seize and take possession of such property, to be distributed under the said Commission, or otherwise dealt with according to law.

[2] [having been verified]

This was a new enactment in England.

No Actions against those acting under Warrant.

6 Geo. 4, c. 16, § 31, Eng. comg. 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted* § 107 *of same.*

[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

XLIV. And be it enacted, That no action shall be brought against any person so appointed by the [Commissioner][1] for anything done in obedience to [his][1] warrant prior to the choice of assignees, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such person or persons by the party or parties intending to bring such action, or by his or their attorney or agent, in writing, signed by the party or parties demanding the same, and unless the same hath been refused or neglected for six days after such demand; and if after such demand and compliance therewith, any action be brought against the person so appointed as aforesaid, without making the petitioning Creditor or Creditors defendant or defendants, if living, on producing and proving such war-

rant at the trial of such action the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the Commissioner;[1] and if such action be brought against the petitioning Creditor or Creditors and the person so appointed as aforesaid, the jury shall, on proof of such warrant, give their verdict for the person so appointed as aforesaid, notwithstanding any such defect of jurisdiction as aforesaid; and if the verdict shall be given against the petitioning Creditor or Creditors the plaintiff or plaintiffs shall recover his or their costs against him or them, to be taxed so as to include such costs as the plaintiff or plaintiffs are liable to pay to the person so appointed as aforesaid.

See s. 40 of this Act and note. This was new in Ireland.

Proof that Defendant is Petitioning Creditor.

XLV. And be it enacted, That in any such action so brought as aforesaid against the petitioning Creditor or Creditors, either alone or jointly with the person so appointed by the Commissioner[1] as aforesaid, for any thing done in obedience to his[1] warrant, proof by the plaintiff or plaintiffs in such action that the defendant or defendants or any of them is or are petitioning Creditor or Creditors shall be sufficient for the purpose of making such defendant or defendants liable, in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

Persons suspected may be Summoned.

XLVI. And be it enacted, That after adjudication it shall be lawful for the Commissioner,[1] by writing under his[1] hand, to summon before him any person known or suspected to have any of the estate of the Bankrupt in his possession, or who is supposed to be indebted to

(The verbal differences are within brackets.)

[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

This was new in England.

Same Act, § 32, *re-enacted* § 108 *of same.*

[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

Same Act, § 33, *re-enacted* § 120 *of same.*

[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

[1] *The word* "Commissioner" *and all words, governed by or relative to it, are in the plural number throughout this corresponding section.*

[2] [meeting]

This power existed under 13 Eliz. c. 7, § 5, Eng.; 1 Jac. 1, c. 15, § 10, Eng., *both repealed by* 6 Geo. 4, *above.*

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the Bankrupt, or any person whom the Commissioner[1] believes capable of giving information concerning the person, trade, dealings, or estate of such Bankrupt, or concerning any act or acts of Bankruptcy committed by him, or any information material to the full disclosure of the dealings of the Bankrupt; and it shall be lawful for the said Commissioner to require such person to produce any books, papers, deeds, writings, or other documents in his custody or power which may appear to the Commissioner necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the Commissioner is authorized to inquire into; and if such person so summoned as aforesaid shall not come before the Commissioner at the time appointed, having no lawful impediment, (made known to the said Commissioner at the time of his [sitting],[2] and allowed by him), it shall be lawful for the said Commissioner, by warrant under his hand and seal, to authorize and direct the person or persons therein named for that purpose to apprehend and arrest such person, and bring him before the Commissioner, to be examined as aforesaid.

How summonses served when persons keeping out of the way, see 12 & 13 Vic. c. 107, s. 72, Ir., p. 148, *ante;* and also see Ch. 5, p. 59, *ante.* This provision was in 11 & 12 Geo. 3, c. 8, s. 20, Ir., rep. hereby.

Power to examine those Summoned.—Refusing to be sworn.

6 Geo. 4, c. 16, § 34, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted* §§ 122 and 260 *of same, from* 11 Oct. 1849.

[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

[2] [meeting]

XLVII. And be it enacted, That upon the appearance of any person so summoned or brought before the [Commissioner][1] as aforesaid, or if any person be present at any [sitting][2] of the Commissioner, it shall be lawful for him to examine every such person upon oath, either by word of mouth or by interrogatories in writing, concerning the person, trade, dealings, or estate of such Bankrupt, or concerning any act or acts

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of Bankruptcy by such Bankrupt committed, and so reduce into writing the answers of every such person; and such answers so reduced into writing the party examined is hereby required to sign and subscribe; and if any such person shall refuse to be sworn, or shall refuse to answer any lawful questions put to him by the said Commissioner touching any of the matters aforesaid, or shall not fully answer to the satisfaction of the said Commissioner any such lawful questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid (not having any lawful objection allowed by the said Commissioner,) and shall not produce any books, papers, deeds, and writings and other documents in his custody or power relating to any of the matters aforesaid, which such person was required by the Commissioner to produce, and to the production of which he shall not state any objection allowed by the said Commissioner, it shall be lawful for the said Commissioner, by warrant under his hand and seal, to commit him to such prison as he shall think fit, there to remain without bail until he shall submit himself to [the Commissioner][3] to be sworn, and full answers make to his satisfaction to all such lawful questions as shall be put to him, and sign and subscribe such examination, and produce such books, papers, deeds, writings, and other documents as aforesaid in his custody or power, to the production of which no such objection as aforesaid has been allowed.

[3] [them]

This was taken from 13 Eliz. c. 7, §§ 5, 6; 1 Jac. 1, c. 15, § 10; 5 Geo. 2, c. 30, § 16, all Eng., *rep. by* 6 Geo. 4, *above.*

See preceding section and note thereto; see 11 & 12 Geo. 3, c. 8, s. 31, Ir., repealed hereby.

Persons so Summoned to have Costs.—Witnesses' Expenses.

XLVIII. And be it enacted, That where any person known or suspected to have any of the estate of the Bankrupt in his possession, or who is supposed to

Same Act, § 35, *re-enacted in substance* § 250 *of same.*

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

[1] [Commissioners]

Taken from 1 Jac. 1, c. 15, §§ 10, 11; 8 Geo. 4, c. 81, § 2, Eng., *both rep. by* 6 Geo. 4, *above.*

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be indebted to the Bankrupt, shall be summoned to attend before the said [Commissioner][1] every such person shall have costs and charges as the said [Commissioner][1] in his discretion shall think fit; and every witness summoned to attend before the [Commissioner][1] shall have his necessary expenses tendered to him, in like manner as is now by law required upon service of a subpœna to a witness in an action at law.

See s. 46 and note at foot thereof. See 11 & 12 Geo. 3, c. 8, s. 30, Ir., repealed hereby.

6 Geo. 4, c. 16, § 36, Eng. *comg.* 1 *Sept.* 1825, *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted* § 117 *of same, from* 11 Oct. 1849.

[1] *The word* "Commissioner" *and all words governed by or relative to it, are in the plural number throughout this corresponding section.*

Bankrupt summoned at any time.

XLIX. And be it enacted, That it shall be lawful for the said Commissioner,[1] by writing under his[1] hand, to summon any Bankrupt before him,[1] whether such Bankrupt shall have obtained his certificate or not; and in case he shall not come at the time by the Commissioner appointed (having no lawful impediments made known to the Commissioner at such time, and allowed by him,) it shall be lawful for the said Commissioner, by warrant under his hand and seal, to authorize and direct any person or persons he shall think fit to apprehend and arrest such Bankrupt, and bring him before the Commissioner; and upon the appearance of such Bankrupt, or if such Bankrupt be present at any sitting of the said Commissioner, it shall be lawful for him to examine such Bankrupt upon oath, either by word of mouth or on interrogatories in writing, touching all matters relating either to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, tenements, goods, money, or debts, and to reduce his answers into writing; which examination so reduced into writing the said Bankrupt shall sign and subscribe; and if such Bankrupt shall refuse to be sworn, or shall refuse to answer any questions put to him by the said Commissioner touching any of the matters aforesaid, or shall not fully answer to the satisfaction of the said Commissioner any such questions, or shall refuse to sign and subscribe his examination so reduced into writing as aforesaid, (not having any lawful objection allowed by the said Commissioner,) it shall be lawful for the said Commissioner, by warrant under his hand and seal, to commit him to such prison as the Commissioner shall think fit, there to remain, without bail, until he shall submit himself to the said Commissioner to be sworn, and full answers make to his satisfaction to such questions as he shall put to him, and sign and subscribe such examination.

A clause to this effect was also in 11 & 12 Geo. 3, c. 8, § 31, Ir., rep. hereby. See observations at foot of ss. 48 and 49 of 12 & 13 Vic. c. 107, Ir., p. 128, *ante*.

Bankrupt's Wife may be summoned.

L. And be it enacted, That it shall be lawful for the Commissioner in manner aforesaid to summon before him the wife of any Bankrupt, and in manner aforesaid to examine her, for the finding out and discovery of the estate, goods, and chattels of such Bankrupt, concealed, kept, or disposed of by such wife in her own person or by her own act, or by any other person, and she shall incur such danger or penalty for not coming before the Commissioner, or for refusing to be sworn and examined, or for refusing to sign or subscribe her examination, or for not fully answering to the satisfaction of the Commissioner, as is hereby provided against other persons.

See s. 46 of this Act, *ante*, and foregoing section, and reference at foot.

Penalty on Gaoler.—£500.

LI. And be it enacted, That if any gaoler to whose custody any Bankrupt or other person shall be com-

(*The verbal differences are within brackets.*)

This section of Geo. 4, *was taken from* 1 Jac. 1, *c.* 15, *ss.* 6, 7, 8, *Eng.*, 5 Geo. 2, *c.* 30, *s.* 16, *Eng.*, *both repealed thereby. See also* 11 *&* 12 Geo. 3, *c.* 8, *s.* 31, *Ir.*, *hereby repealed* (1836).

Same Act, § 37, *re-enacted* § 118 *of same.*

[1] *This section of* Geo. 4, *was taken from* 21 Jac. 1, *c.* 19, *s.* 6, *Eng.*, *repealed thereby. See* 11 *&* 12 Geo. 3, *c.* 8, *s.* 31, *Ir.*, *hereby repealed* (1836).

Same Act, § 38, *re-enacted* § 274 *of same.*

mitted as aforesaid shall suffer such Bankrupt or other person to escape, every such gaoler shall forfeit five hundred pounds.

See 12 & 13 Vic. c. 107, s. 5, Ir., p. 86, *ante*, and note thereto. Forfeitures, how recovered and how applied, see s. 118 of this Act, *post*.

(The verbal differences are within brackets.)

Verbatim.

Questions to be specified in Warrant.—Habeas Corpus.—Entire Examination.

6 Geo. 4, c. 16, § 39, Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 261 *of same, from* 11 Oct. 1849.

LII. And be it enacted, That if any person be committed by the Commissioner[1] for refusing to answer or for not fully answering any question put to him by the said Commissioner he[1] shall in his warrant of commitment specify every such question; provided that if any person committed by the Commissioner shall bring any Habeas Corpus in order to be discharged from such commitment, and there shall appear on the return of such Habeas Corpus any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the Court or Judge before whom such party shall be brought by Habeas Corpus, and such Court or Judge is hereby required to commit such person to the same prison, there to remain until he shall conform, unless it shall be shown to such Court or Judge by the party committed that he has fully answered all lawful questions put to him by the Commissioner, or if such person was committed for refusing to be sworn, or for not signing his examination, unless it shall appear to such Court or Judge that he had a sufficient reason for the same: Provided also, that such Court or Judge shall, if required thereto by the party committed, in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such party whereof any such question was a part, and if it shall appear from the whole examination

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[1] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

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that the answer or answers of the party committed is or are satisfactory, such Court or Judge shall and may order the party so committed to be discharged.

(The verbal differences are within brackets.)

But now see 12 & 13 Vic. c. 107, s. 49, Ir., and notes thereto, p. 128, *ante*.

As to Actions for False Imprisonment.

LIII. And be it enacted, That in every action in respect of any such commitment, brought by any Bankrupt or other person committed, the Court or Judge before which or whom such action is tried shall, if thereto required by the defendant or defendants in such action, (in case the whole of the examination of the party so committed shall not have been stated in the warrant of commitment,) inspect and consider the whole of such examination; and if upon such [examination][1] and consideration it shall appear to such Court or Judge that the party was lawfully committed, the defendant or defendants in such action shall have the same benefit therefrom as if the whole of such examination had been therein stated.

Same Act, § 40.

[1] [inspection]

Limitation of Actions.—General Issue.—Costs.

LIV. And be it enacted, That every action brought against any person for any thing done in pursuance of this Act shall be commenced within three calendar months next after the fact committed; and the defendant or defendants in any such action may plead the general issue, and give this act and the special matter in evidence at the trial, and that the same was done by authority of this Act; and if it shall appear so to have been done, or that such action was commenced after the time before limited for bringing the same, the jury shall find for the defendant or defendants; and if there be a verdict for the defendant or defendants, or if the plaintiff or plaintiffs shall be nonsuited, or dis-

Same Act, § 44, *re-enacted* § 159 *of same.*

Verbatim.

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

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continue his, her, or their action or suit after appearance thereto, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall recover double costs.

6 Geo. 4, c. 16, § 45, Eng., *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

[1] *The word* "Commissioner" *and all words governed by or relative to it, are in the plural number throughout this corresponding section.*

[2] [an]

[3] [and assign all the estate]

[4] [and all the estate of the Bankrupt which shall be so delivered up and assigned, shall be as effectually and legally vested in the assignees so chosen as aforesaid, as if the first assignment had been made to them by the Commissioners]

[5] [accept such assignment]

[6] [their hands]

[7] [such assignment and]

Provisional Assignee.

LV. And be it enacted, That it shall be lawful for the Commissioner,[1] as often as he[1] shall think fit, by writing under his hand, to appoint one or more person or persons [ ][2] assignee or assignees of the Bankrupt's real and personal estate, or of any part thereof; which assignee or assignees shall or may be removed at the meeting of the Creditors for the choice of assignees, if they shall think fit; and such assignee or assignees so removed shall deliver up [all the chattels and effects][3] of the Bankrupt come to his or their possession, *to the* assignees so chosen as hereinafter mentioned [ ][4]; and if such first assignee or assignees shall not within ten days after notice given of the said choice of assignees, and of their consent to [act as such],[5] signified to the first assignee or assignees by writing under [the hands of such assignees so chosen by the Creditors,][6] make [such][7] delivery as aforesaid, every such assignee shall forfeit two hundred pounds.

The difference between this and the corresponding section arose from the altered state of the law in England at the time of the passing of this act, in 1836. Deeds of assignment became no longer necessary in the case of assignees. See this shortly explained in Ch. 5, page 71, *ante.* See also s. 74, *et seq.* of this act. This section may be said to be repealed, though not actually so, by the provisions for appointment of Official Assignees, under 12 & 13 Vic. c. 107, Ir., ss. 28, *et seq.*, which see, and notes at foot, p. 109, *ante.*

Same Act, § 46, *re-enacted in substance* § 97 *of same.*

[1] [three several meetings so]

[2] *The words in italics are not in the corresponding section.*

Proof of Debts.

LVI. And be it enacted, That at the [two or more sittings][1] appointed by the Commissioner as aforesaid, and at every other *sitting or*[2] meeting by him appointed for proof of debts (whereof, and of the purport whereof, ten days' notice shall have been given in the

[Dublin][3] Gazette), every Creditor of the Bankrupt may prove his debt by his own oath; and all bodies politic and public companies incorporated, or authorized to sue or bring actions, either by charter or Act of Parliament, may prove by an agent, provided such agent shall in his deposition swear that he is such agent as aforesaid, and that he is authorized to make such proof; and if any Creditor shall live remote from [Dublin][4] he may prove by affidavit sworn before a Master in Chancery, Ordinary or Extraordinary, or if such Creditor shall live out of [Ireland],[5] by affidavit sworn before a magistrate where such Creditor shall be residing, and attested by a notary public, British minister or consul; and no Creditor shall pay any contribution on account of any such debt; provided that it shall be lawful for the said Commissioner[6] to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to prove a debt under the said Commission, or to require such further proof, and to examine such other persons in relation thereto, as he shall think fit.

See petitioning Creditor's debt, page 53, *ante*, and proof of debts, p. 64.

(*The verbal differences are within brackets.*)

[3] [London]

[4] [the place of the meeting of the Commissioners]

[5] [England]

[6] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

The three meetings were reduced to two by 12 & 13 Wm. 4, c. 56, § 20, Eng., *now rep. as above. This section was taken from* 5 Geo. 2, c. 30, ss. 25, 26, Eng., *rep. by* 6 Geo. 4, *above.*

Extraordinary Commissions.

LVII. And be it enacted, That it shall be lawful for the Lord Chancellor, *whenever it shall be made appear to him, upon affidavit or any other sufficient document, expedient so to do,*[1] to direct an [Extraordinary][2] Commission to issue, *upon such terms as he shall think proper,*[1] for proof of debts [ ],[3] for the examination of witnesses, [or any other purpose relating to any proceeding in Bankruptcy];[4] and the Commissioner in every such Commission [ ][5] shall, *upon taking the oath herein-before prescribed for the Commissioner to be appointed under this Act,*[1] possess the same powers to

Same Act, § 20.

[1] *The words in italics are not in the corresponding section.*

[2] [auxiliary]

[3] [under £20 and]

[4] [on oath, or for either of such purposes]

[5] [issued for the examination of witnesses]

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(The verbal differences are within brackets.)

[6] [witnesses]

The word "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

[7] [as are possessed by the Commissioners in any original Commission]

[8] [annexed to and form a part of the original Commission]

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compel the attendance of witnesses, and to examine [them,][6] and to enforce obedience to such examination, and the production of books, deeds, papers, writings and other documents, [as the Commissioner, appointed under this Act, and such fees shall be paid on the proceedings before him as the Lord Chancellor shall direct, and he shall receive out of the funds in the Bankruptcy or out of such fees, or both, such remuneration as the Lord Chancellor shall direct:][7] provided always, that the examination of witnesses under such Commission shall be taken down in writing, and shall be [returned to the Commissioner appointed under this Act].[8]

6 Geo. 4, c. 16, § 47, Eng.; *comp.* 1 Sep. 1825; *rep. by* 12 & 13 Vic, c. 106, Eng. *re-enacted* § 165 *of same, from* 11 Oct. 1849.

Verbatim.

Taken from 46 Geo. 3, c. 135, § 2, U. K., *rep. by* 6 Geo. 4, *above.*

Boná fide Creditors may prove.

LVIII. And be it enacted, That every person with whom any Bankrupt shall have really and bona fide contracted any debt or demand before the issuing the Commission against him shall, notwithstanding any prior act of Bankruptcy committed by such Bankrupt, be admitted to prove the same, and be a Creditor under such Commission, as if no such act of Bankruptcy had been committed, provided such person had not at the time the same was contracted, notice of any act of Bankruptcy by such Bankrupt committed.

See p. 64, proof of debts.

Same Act, § 48, *re-enacted in substance* § 168 *of same.*

Verbatim.

Six months' wages or salary.

LIX. And be it enacted, That when any Bankrupt shall have been indebted at the time of issuing the Commission against him to any servant or clerk of such Bankrupt, in respect of the wages or salary of such servant or clerk, it shall be lawful for the Commissioner, upon proof thereof, to order so much as shall be so due as aforesaid, not exceeding six months' wages or salary, to be paid to such servant or clerk out of the estate of such Bankrupt, and such servant or clerk

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shall be at liberty to prove under the Commission for any sum exceeding such last-mentioned amount.

(The verbal differences are within brackets.)

But now see s. 40 of 12 & 13 Vic. c. 107, Ir., p. 118, *ante.*

Apprentices.—Compensation.

LX. And be it enacted, That where any person shall be an apprentice to a Bankrupt at the time of issuing of the Commission against him, the issuing of such Commission shall be and enure as a complete discharge of the indenture or indentures, whereby such apprentice was bound to such Bankrupt; and if any sum shall have been really and bona fide paid by or on the behalf of such apprentice to the Bankrupt as an apprentice fee, it shall be lawful for the Commissioner, upon proof thereof, to order any sum to be paid to, or for the use of such apprentice which he shall think reasonable, regard being had in estimating such sum to the amount of the sum so paid by, or on behalf of such apprentice to the Bankrupt, and to the time during which such apprentice shall have resided with the Bankrupt previous to the issuing of the Commission.

Same Act, § 49, *re-enacted in substance*, § 170 *of same.*

Verbatim.

Where an agreement of apprenticeship was concluded, the fee paid, and the lad serving, yet indentures not completed, a part of the fee was ordered to be returned to the parent.—Ex p. *Haynes*, 2 Gl. & J. 122.

Mutual debts.—Set off.

LXI. And be it enacted, That where there has been mutual credit given by the Bankrupt and any other person, [and][1] where there are mutual debts between the Bankrupt and any other person, the [Commissioner][2] shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of Bankruptcy committed by such Bankrupt before the credit given to, or the debt con-

Same Act, § 50, *re-enacted in substance*, § 171 *of same.*

[1] [or]

[2] [Commissioners]

(The verbal differences are within brackets.)

tracted by him, and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand hereby made proveable against the estate of the Bankrupt, may also be set off in manner aforesaid, against such estate, provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of Bankruptcy by such Bankrupt committed.

Taken from 5 Geo. 2, c. 30, § 28, Eng., 46 Geo. 3, c. 135, § 3, U. K., *rep. by* 6 Geo. 4, *above.*

See mutual debts, p. 70, *ante.*

Debts proveable, although not payable at time of Bankruptcy.

6 Geo. 4, c. 16, § 51, *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance*, § 172 *of same, from* 11 Oct. 1849.

LXII. And be it enacted, That any person who shall have given credit to the Bankrupt upon valuable consideration for any money or other matter or thing whatsoever which shall not have become payable when such Bankrupt committed an act of Bankruptcy, and whether such credit shall have been given upon any bill, bond, note, or other negotiable security, or not, shall be entitled to prove such debt, bill, bond, note, or other security as if the same was payable presently, and receive dividends equally with the other Creditors, deducting only thereout a rebate of interest for what he shall so receive at the rate of [six][1] per cent., to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted.

[1] [five]

This was taken from 7 Geo. 1, c. 31, § 1, Eng., 49 Geo. 3, c. 121, § 9, U. K. *rep. by* 6 Geo. 4, *above.*

As to interest on debts, see p. 66, *ante*, and for contingent debts, see page 67; see also introduction, p. 11, and see sec. 63 of 12 & 13 Vic. c. 107, Ir., p. 142, *ante*, and note.

Sureties may prove.

Same Act, § 52, Eng., *comg.* 1 *Sept.* 1825; *rep. by* 12 & 13 Vic., c. 106, Eng.; *re-enacted in substance*, § 173 *of same, from* 11 *Oct.* 1849.

LXIII. And be it enacted, That any person who at the issuing the Commission shall be surety or liable for any debt of the Bankrupt, or bail for the Bankrupt

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(The verbal differences are within brackets.)

either to the Sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt, (although he may have paid the same after the Commission issued,) if the Creditor shall have proved his debt under the Commission shall be entitled to stand in the place of such Creditor as to the dividends and all other rights under the [ ][1] Commission which such Creditor possessed or would be entitled to in respect of such proof; or if the Creditor shall not have proved under the Commission, such surety, or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the Commission, not disturbing the former dividends, and may receive dividends with the other Creditors, although he may have become surety, liable, or bail as aforesaid, after an act of Bankruptcy committed by such Bankrupt; provided that such person had not when he became such surety or bail, or so liable as aforesaid, notice of any act of Bankruptcy by such Bankrupt committed.

[1] [said]

Taken from 49 Geo. 3, c. 121, § 8, U. K., *rep. by* 6 Geo. 4, *above.*

It would appear that every man becoming legally liable for the payment of a debt, even endorsing as an accommodation, is a surety within the meaning of those statutes.—1 Rose, 4; 13 East, 427; 1 Gl. & J. 224.

Bottomry, &c., Bonds.—Insurances.

LXIV. And be it enacted, That the obligee in any bottomry or respondentia bond, and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim, and, after the loss or contingency shall have happened, to prove, his debt or demand in respect thereof, and receive dividends with the other Creditors as if the loss or contingency had happened before the issuing the Commission against such obligor or insurer; and that the person effecting any policy of insurance upon ships or goods

Same Act, § 53, Eng., *re-enacted in substance* § 174 *of same, from* 11 Oct. 1849.

Verbatim.

(The verbal differences are within brackets.)

Taken from 19 Geo. 2, c. 32, § 2, Eng., 49 Geo. 3, c. 121, § 16, U. K., *both rep. by* 6 Geo. 4, *above.*

with any person, as a subscriber, or underwriter, becoming Bankrupt, shall be entitled to prove any loss to which such Bankrupt shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person or persons so interested is not or are not within the united realm.

6 Geo. 4, c. 16, § 54, Eng., *comg.* 1 Sep. 1825, *rep. by* 12 & 13 Vic., c. 106, Eng., *re-enacted in substance* § 175 *of same, from* 11 *Oct.* 1849.

Verbatim.

Taken from 49 Geo. 3, c. 121, § 17, U. K., *rep. by* 6 Geo. 4, *above.*

Annuity Creditor may prove.

LXV. And be it enacted, That any annuity Creditor of any Bankrupt, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the Bankruptcy, shall be entitled to prove for the value of such annuity, which value the Commissioner shall ascertain, regard being had to the original price, given for the said annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the Commission.

See annuities, page 67, *ante.*

Same Act, § 55, Eng., *re-enacted in substance* § 176 *of same, from* 11 *Oct.* 1849.

Verbatim.

Sureties for Annuity, how to Prove.

LXVI. And be it enacted, That it shall not be lawful for any person entitled to any annuity granted by any Bankrupt to sue any person who may be collateral surety for the payment* of such annuity, until such annuitant shall have proved under the Commission against such Bankrupt for the value of such annuity, and for the payment thereof; and if such surety, after such proof, pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity; and if such surety shall not (before any payment of the said annuity subsequent to the Bankruptcy shall have become due) pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity until such annuitant shall have been paid or

* "payment" *was a misprint in* 6 Geo. 4, c. 16, *for* "arrears," *and the Act* 6 W. 4, c. 14, *has copied the misprint. The first is an error of the printer, the parliamentary roll being* "arrears," *but it is suggested the latter is really a true copy of the Roll itself.*

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satisfied the amount so proved, with interest thereon at the rate of [five][1] per cent. per annum from the time of notice of such proof and of the amount thereof being given to such surety; and after such payment or satisfaction such surety shall stand in the place of such annuitant in respect of such proof as aforesaid to the amount so paid or satisfied as aforesaid by such surety; and the certificate of the Bankrupt shall be a discharge to him from all claims of such annuitant or of such surety in respect of such annuity; provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the Commission before such surety shall have fully paid or satisfied the amount so proved as aforesaid.

See last section and reference.

Contingent Debts, how Proveable.

LXVII. And be it enacted, That if any Bankrupt shall before the issuing of the Commission have contracted any debt payable upon a contingency which shall not have happened before the issuing of such Commission, the person with whom such debt has been contracted may, if he think fit, apply to the Commissioner to set a value upon such debt, and the Commissioner is hereby required to ascertain the value thereof, and to admit such person to prove the amount so ascertained, and to receive dividends thereon; or if such value shall not be so ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt, and receive a dividend with the other Creditors, not disturbing any former dividends, provided such person had not when such debt was contracted notice of any Bankruptcy by such Bankrupt committed.

See contingent debts, p. 67, *ante.*

Corresp. Enactments.

(The verbal differences are within brackets.)

[1] [four]

Same Act, § 56, *re-enacted in substance* § 177 *of same, from* 11 *Oct.* 1849.

Verbatim.

(The verbal differences are within brackets.)

Interest on Bills and Notes.

LXVIII. And be it enacted, That in all future Commissions against any person or persons liable upon any bill of exchange or promissory note whereupon interest is not reserved, overdue at the issuing the Commission, the holder of such bill of exchange or promissory note shall be entitled to prove for *the legal*[1] interest upon the same, to be calculated by the Commissioner to the date of the [Commission.][2]

See sec. 126 of this Act, as to holding securities, and see page 64, *ante.*

6 Geo. 4, c. 16, § 57, Eng. comg. 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance with amendments*, § 180 *of same, from* 11 Oct. 1849.

[1] *The words in italics are not in the corresponding section.*

[2] [Commission, at such rate as is allowed by the Court of King's Bench in actions upon such bills and notes]

Plaintiff's Costs on Judgment.

LXIX. And be it enacted, That if any [person shall have obtained any judgment, decree, or order, in any action at law or cause or matter in Equity],[1] against any [party][2] who shall thereafter become Bankrupt, for any debt or demand in respect of which such [person][3] shall prove under the Commission, such [person][3] shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the Bankruptcy.

See reference under last section.

Same Act, § 58, *re-enacted* § 181 *of same.*

[1] [plaintiff in any action at law or suit in equity or petition in Bankruptcy or lunacy shall have obtained any judgment, decree, or order]

[2] [person]

[3] [plaintiff or petitioner]

Creditor's election on proof.—Restored, if Commission superseded.

Same Act, § 59, *re-enacted* § 182 *of same.*

LXX. And be it enacted, That no Creditor, who has brought any action, or instituted any suit against any Bankrupt in respect of a demand prior to the Bankruptcy, or which might have been proved as a debt under the Commission against such Bankrupt, shall prove a debt under such Commission, or have any claim entered upon the proceedings under such Commission, without relinquishing such action or suit; and in case such Bankrupt shall be in prison or custody at

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the suit of, or detained by such Creditor he shall not prove or claim as aforesaid, without giving a sufficient authority in writing for the discharge of such Bankrupt; and the proving or claiming a debt under a Commission by any Creditor, shall be deemed an election by such Creditor to take the benefit of such Commission, with respect to the debt so proved or claimed; provided that such Creditor shall not be liable to the payment to such Bankrupt or his assignees, of the costs of such action or suit so relinquished by him, and that where any such Creditor shall have brought any action or suit against such Bankrupt jointly with any other person or persons, his relinquishing such action or suit against the Bankrupt, shall not affect such action or suit against such other person or persons: provided also, that any Creditor who shall have so elected to prove or claim as aforesaid, if the Commission be afterwards superseded, may proceed in the action as if he had not so elected, and in bailable actions shall be at liberty to arrest the defendant de novo, if he has not put in bail below or perfected bail above, or, if the defendant has put in or perfected such bail, to have recourse against such bail, by requiring the bail below to put in and perfect bail above within the first eight days in term after notice in the [Dublin][1] Gazette of the superseding such Commission, and by suing the bail upon their recognizance, if the condition thereof is broken.

See pp. 64. 67, *ante.*

Expunging Proof.—Undertaking for Costs.

Same Act, § 60, *re enacted* § 183 *of same.*

Verbatim.

LXXI. And be it enacted, That whenever it shall appear to the assignees, or to two or more Creditors, who have each proved debts to the amount of twenty pounds or upwards, that any debt proved under the Commission is not justly due, either in the whole or in part,

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[1] [London]

(The verbal differences are within brackets.)

such assignees or Creditors may make representation thereof to the Commissioner; and it shall be lawful for the said Commissioner to summon before him, and examine upon oath, any person who shall have so proved as aforesaid, together with any person whose evidence may appear to the Commissioner to be material, either in support of, or in opposition to any such debt; and if the said Commissioner, upon the evidence given on both sides, or (if the person who shall have so proved as aforesaid, shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode,) upon the evidence adduced by such assignees or Creditors as aforesaid, shall be of opinion that such debt is not due, either wholly or in part, the said Commissioner shall be at liberty to expunge the same, either wholly or in part from the proceedings: provided that such assignees or Creditors requiring such investigation shall, before it is instituted, sign an undertaking, to be filed with the proceedings, to pay such costs as the Commissioner shall adjudge to the Creditor who has proved such debt as aforesaid, such costs to be recovered by petition; provided also that such assignees or Creditors may apply in the first instance by petition to the Lord Chancellor, or that either party may petition against the determination of the Commissioner.

This was new in England.

As to expunging and reducing, see p. 70, *ante*.

Choice of Assignees at first Sitting.—Commissioner may reject.

6 Geo. 4, c. 16, § 61, Eng. *comg.* 1 *Sept.* 1825; *rep.*, *by* 12 & 13 Vic. c. 106, Eng., *re-enacted* § 139 *of same, from* 11 Oct. 1849.

[1] [second]

[2] [Commissioners]

[3] [any]

LXXII. And be it enacted, That at the [first][1] sitting appointed by the [Commissioner][2] as aforesaid, or [an][3] adjournment thereof, assignees of the Bankrupt's estate and effects shall be chosen; and all Creditors who have proved debts under the Commission to

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the amount of ten pounds and upwards shall be entitled to vote in such choice, and also any person authorized by letter of attorney from any such Creditor or Creditors, upon proof of the execution thereof, either by affidavit sworn before a Master in Chancery, ordinary or extraordinary, or by oath before the Commissioner viva voce, and in case of Creditors residing out of [Ireland][4] by oath before a magistrate where the party shall be residing, duly attested by a notary public, British minister or consul; and the choice shall be made by the major part in value of the Creditors so entitled to vote: Provided that the [Commissioner][2] shall have power to reject any person so chosen who shall appear to [him][5] unfit to be such assignee as aforesaid; and upon such rejection a new choice of another assignee or assignees shall be made as aforesaid.

As to assignees generally, see p. 71, and see ss. 81 & 55 of this Act, and references thereunder.

Joint Creditors may prove.—But as to Dividend.

LXXIII. And be it enacted, That in all Commissions against one or more of the partners of a firm any Creditor to whom the Bankrupt or Bankrupts is or are indebted jointly with the other partner or partners of the said firm or any of them shall be entitled to prove his debt under such Commission, for the purpose only of voting in the choice of assignees under such Commission, and of assenting to or dissenting from the certificate of such Bankrupt or Bankrupts, or for either of such purposes; but such Creditor shall not receive any dividend out of the separate estate of the Bankrupt or Bankrupts until all the separate Creditors shall have received the full amount of their respective debts, unless such Creditor shall be a petitioning Creditor in a Commission against one member of a firm.

This was a new enactment in Ireland. See s. 33, *ante*.

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(*The verbal differences are within brackets.*)

[4] [England]
[2] [Commissioners]
[5] [them]

Altered by 1 & 2 W. 4, c. 56, § 20, Eng., *to* "two or more public meetings instead of the three meetings directed by the said recited Act for the Bankrupt to surrender and conform, the last of which said meetings shall be on the forty-second day after the publication of his Bankruptcy in the *Gazette;* and the choice of assignees shall take place at the first of such two meetings."

This clause was originally taken from 5 Geo. 2, c. 30, ss. 26, 27, Eng., *rep. thereby.*

Same Act, § 62, *re-enacted in substance* § 140 *of same.*

Verbatim.

Taken from 3 Geo. 4, c. 81, § 10, Eng., *rep. thereby.*

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Personal Estate to vest in Assignees.

LXXIV. And be it enacted, That [when any person hath been adjudged a Bankrupt],[1] all the present and future personal estate of such Bankrupt, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed or come to him, before he shall have obtained his certificate, [and][2] all debts due or to be due to the Bankrupt, wheresoever the same may be found or known, [shall become absolutely vested in or transferred to the assignee or assignees for the time being, whether appointed by the Commissioner or chosen by the Creditors, as herein-before provided, for the benefit of the Creditors of the Bankrupt, by virtue of such appointment or choice as aforesaid, and without any deed of assignment for that purpose;][3] and the property, right, and interest in such debts shall become vested in and transferred to such assignees for the time being as fully as if the assurance whereby they are secured had been made to such assignees; and neither the Bankrupt, nor any person claiming through or under him, shall have power to recover the same, or to make any release or discharge thereof; neither shall the same be attached as the debt of the Bankrupt by any person, according to the custom of the city of [Dublin][4] or otherwise; but such assignees for the time being shall have like remedy to recover the same, in their own names, as the Bankrupt himself might have had if he had not been adjudged Bankrupt.

In the margin above as well to this as the three following sections a break occurs in the succession of its corresponding enactments. Hitherto the Act had been copying section for section with considerable uniformity from 6 G. 4, c. 16, Eng. Between the passing of that Act, however (1825), and the passing of this Act (1836), one very material change was effected in the Law in England respecting Bankrupt's real and personal estate. By 1 & 2 Wm. 4, c. 56, ss. 25, 26, Eng., it was made to vest in the assignees upon appointment, "by virtue of such appointment,"

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(The verbal differences are within brackets.)

6 Geo. 4, c. 16, § 63, Eng., comg. 1 Sept. 1835; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 141 *of same, from* 11 Oct. 1849.

[1] [the Commissioners shall assign to the assignees for the benefit of the creditors of the Bankrupt]

[2] [and the Commissioners shall also assign as aforesaid]

[3] *The "vesting clause" within these brackets is copied from* 1 & 2 Wm. 4, c. 56, § 25, Eng., *rep.*

[4] [London]

The last paragraph is from 6 Geo. 4, c. 16, *sec.* 63, *as above. Taken originally from* 1 Jac. 1, c. 18, § 13, Eng., 5 Geo. 2, c. 30, § 26, Eng., *both rep. thereby*

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alone or jointly, as the case might be, "without any conveyance for that purpose." This provision is now conveyed into the present section and ss. 75, 76, 77, following. See s. 55 of this Act, p. 234, *ante*, and note at foot and the several references therein. See also 12 & 13 Vic. c. 107, Ir., ss. 77, 78, pp. 151, 152, *ante*, and notes at foot.

On Death or Removal, to vest in Successor.

LXXV. And *be it enacted, That*[1] as often as any such assignee shall die, or be lawfully removed, and a new assignee duly appointed *or chosen*,[1] all such personal estate as was then vested in such deceased or removed assignee shall, by virtue of such appointment or choice, vest in the new assignee, either alone or jointly with the existing assignee or assignees, as the case may require, without any deed of assignment for that purpose.

See note at foot of preceding sections.

Real Estate to vest in Assignees.

LXXVI. And [be it enacted, That][1] all lands, tenements, and hereditaments (except copyhold or customaryhold) in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to his Majesty, to which any Bankrupt is entitled, and all interest to which such Bankrupt is entitled in any of such lands, tenements, or hereditaments, and of which he might, according to the laws of the several countries, dominions, plantations, or colonies, have disposed, and all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert, or come to such Bankrupt, before he shall have obtained his certificate [ ],[2]* [and all deeds, papers, and writings respecting the same shall vest][3] in the assignee or assignees for the time being of such Bankrupt, whether appointed by the Commissioner or chosen by the Creditors of the Bankrupt, as herein-before mentioned, for the benefit of the Creditors of the Bankrupt, by virtue

Corresp. Enactments.

(The verbal differences are within brackets.)

The concluding provision of 1 & 2 Wm. 4, c. 56, § 25, Eng., com. 20 Oct. 1831.

[1] *The words in italics are not in the corresponding section.*

6 Geo. 4, c. 16, Eng. *as above*, § 64.

[1] [the Commissioners shall by deed indented and enrolled in any of his Majesty's Courts of Record convey to the said assignees for the benefit of all the creditors as aforesaid]

[2] [And all deeds, papers and writings respecting the same, and every such deed shall be valid against the Bankrupt and against all persons claiming under him]

* *The first clause of* 1 & 2 Wm. 4, c. 56, § 26, Eng., comg. 20 Oct. 1831, *rep.*

[3] Where any person shall have been adjudged a Bankrupt, all such present and future real estate of such Bankrupt, whether in the United Kingdom of Great Britain and Ireland, or in any of the dominions, plan-

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

tations or colonies belonging to his Majesty, as by the said recited Act is directed to be conveyed by the Commissioners to the assignees, shall vest]

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of such appointment or choice as aforesaid, and without any deed of conveyance for that purpose, discharged from any claim of the Bankrupt or any person deriving under him.

See note at foot of ss. 74, 75, preceding.

On Death or Removal to vest in Successor.

Concluding provision of 1 & 2 Wm. 4, c. 56, § 26, comg. 20 Oct. 1831, *rep.*

[1] [any]

[2] [or displaced]

[3] *The words in italics are not in the corresponding section.*

LXXVII. And be it enacted, That as often as [ ][1] such assignee or assignees shall die, or be lawfully removed [ ][2] and a new assignee or assignees shall be duly appointed *or chosen*,[3] such of the aforesaid real estate as shall remain unsold or unconveyed shall by virtue of such appointment vest in the new assignee or assignees, either alone or jointly with the existing *assignee or*[3] assignees, as the case may require, without any conveyance for that purpose.

See note at foot of ss. 74, 75, 76.

Certificate of Appointment to be Enrolled.

The substance of the subjoined section was taken from 1 & 2 W. 4, c. 56, § 27, Eng., *rep. by* 12 & 13 V. c. 106, Eng. *By that Act of* Wm. 4, *the Court of Bankruptcy in London was constituted a Court of Record.*

LXXVIII. And be it enacted, That a certificate of the appointment or choice of such assignee under the hand and seal of the said Commissioner shall be entered of Record in the office for the enrolment of matters relating to Bankruptcy herein-after mentioned; and that the same, when so enrolled, shall be as effectual, to all intents and purposes, as if a deed or deeds of assignment or conveyance of the personal or real estates of such Bankrupt had been executed to the said assignees, and duly registered or enrolled.

The Court of Bankruptcy in England was constituted a Court of Record under 1 & 2 Wm. 4, c. 56, s. 1, Eng. This distinction not being conferred on the Court of Bankruptcy in Ireland, measures became necessary in order to subsequent proceedings in evidence which would not otherwise be required. See note s. 102 of 12 & 13 Vic., c. 107, Ir., p. 175, *ante*, and note at foot, correcting a literal error, s. 27, for s. 78, in fifth line thereof. See also ss. 109 to 115 inclusive, of this act, *post.*

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Commissioner may Sell Hereditaments.

LXXIX. And be it enacted, That the Commissioner shall, by deed indented, and enrolled [in any of his Majesty's Courts of Record at Dublin,][1] make sale, for the benefit of the Creditors, [ ][1] of any lands, tenements, and hereditaments, situate either in England, or Ireland, *or elsewhere*,[2] whereof the Bankrupt is seised of any estate tail in possession, reversion, or remainder, and whereof no reversion or remainder is in the crown, the gift or provision of the crown; and every such deed shall be good against the said Bankrupt and the issue of his body, and against all persons claiming under him after he became Bankrupt, and against all persons whom the said Bankrupt, [by virtue of the provisions of any Act now in force for the abolition of fines and recoveries, and substituting other assurances in lieu thereof,][3] or any other means, might cut off or debar from any remainder, reversion, or other interest in or out of any of the said lands, tenements, and hereditaments.

Notice of Removal of Assignees.

LXXX. And be it enacted, That in case of the removal of any assignee or assignees the Commissioner shall, in the two Dublin Gazettes next after the removal of such assignee or assignees, cause advertisements to be inserted, giving notice of such removal, and directing persons indebted to the Bankrupt's estate not to pay any debt to the assignee or assignees so removed.

A provision similar to this will be found at close of 11 & 12 Geo. 3, c. 8, s. 23, Ir., hereby repealed.

Suits not abated by Death.—Removal of Assignees.

LXXXI. And be it enacted, That whenever an assignee shall die, or a new assignee or assignees

Corresp. Enactments.

(The verbal differences are within brackets.)

6 Geo. 4, c. 16, § 65, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

[1] [as aforesaid]

[2] *The words in italics are not in the corresponding section.*

[3] [by fine, common recovery,]

Taken from 21 *Jac.* 1, *c.* 19, § 12, Eng., *rep. by* 6 Geo. 4, *above.*

A clause in 6 Geo. 4, c. 16, § 66, Eng., *comg.* 1 *Sept.* 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 *Oct.* 1849.

Taken from 5 Geo. 2, c. 30, § 31, Eng., *rep. by* 6 Geo. 4, *above.*

Same Act, § 67, *re-enacted* § 157 *of same.*

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding section.*

This was new in England.

shall be *appointed or*[1] chosen as aforesaid, no action at law or suit in equity shall be thereby abated, but the Court in which any action or suit shall be depending may, upon the suggestion of such death or removal, and new *appointment or*[1] choice, allow the name *or names*[1] of the surviving or new assignee or assignees to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he or they had originally commenced the same.

This is extended, by the adoption of the words *or other proceeding* in 12 & 13 Vic. c. 107, s. 79, Ir., which see p. 153, *ante*, and note at foot. The provision was new in Ireland under this Act.

Commissioner may Sell Copyhold.

6 Geo. 4, c. 16, § 68, Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted* § 209 *of same, from* 11 Oct. 1849.

[1] [in any of his Majesty's Courts of Record]

[2] *The words in italics are not in the corresponding section.*

Taken from 13 Eliz., c. 7, § 2, Eng., *rep. by* 6 Geo. 4, *above.*

LXXXII. And be it enacted, That the Commissioner shall have power, by deed indented, and enrolled [as aforesaid,][1] to make sale, for the benefit of the Creditors, of any copyhold or customaryhold lands *of the Bankrupt, either in England, Scotland, or elsewhere,*[2] or of any interest to which any Bankrupt is entitled therein, and thereby to entitle or authorize any person or persons on his behalf to surrender the same for the purpose of any purchaser or purchasers being admitted thereto.

This is new in Ireland. It is generally believed that there exists but one copyhold estate in Ireland.

Vendees of Copyhold, &c., to Compound with the Lords.

Same Act, § 69, *re-enacted in substance* § 210 *of same.*

LXXXIII. And be it enacted, That every person to whom any sale of copyhold or customary lands or tenements shall be made by the Commissioner shall, before he enter into or take any profit of the same, agree and compound with the lords of the manors of whom the same shall be holden for *such*[1] fines, dues, and other services as theretofore have been usually paid for the same, and thereupon the said lords shall, at the next or any subsequent Court to be holden for the said manors, grant unto such vendee, upon request, the said [copyhold][2] or customary lands or tenements for such estate or interest as shall have been so sold to him as aforesaid, reserving the ancient rents, customs, and services, and shall admit him tenant of the same.

This is new also; see note to preceding section.

Conditional Estates Redeemable.

LXXXIV. And be it enacted, That if any Bankrupt shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deed, such grant, conveyance, assurance, pledge, or deposit, being upon condition or power of redemption at a future day, by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money, or other performance, according to such condition, as fully as the Bankrupt might have done; and after such tender, payment, or performance may sell and dispose of such real or personal estate for the benefit of the Creditors as aforesaid.

This provision existed in 11 & 12 Geo. 3, c. 8, s. 3, Ir., repealed hereby.

When Estate fraudulently extended.

LXXXV. And be it enacted, That if any real or personal estate or debts of any Bankrupt be extended, after he shall have become Bankrupt, by any person, under pretence of his being an accountant of or debtor to the king, the Commissioner[1] may examine upon oath whether the said debt was due to such debtor or accountant upon any contract originally made between

(The verbal differences are within brackets.)

[1] *The word in italics is not in the corresponding section.*

[2] [copy]

This was an enlargement of 13 Eliz., c. 7, § 3, Eng., *rep. by* 6 Geo. 4 *above.*

Same Act, § 70, *re-enacted in substance*, § 149 *of same.*

Verbatim.

Tken from 21 Jac. 1, c. 19, § 13, Eng., *rep. by* 6 Geo. 4 *above.*

Same Act, § 71, *re-enacted in substance*, § 127 *of same.*

[1] *The word* "Commissioner" *and all words relative to or governed by it are in the plural number throughout this corresponding section.*

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

1 *The word* "Commissioner" *and all words governed by or relative to it, are in the plural number throughout this corresponding section.*

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such accountant and the Bankrupt; and if such contract was originally made with any other person than the said debtor or accountant, or in trust for any other person or persons, the Commissioner may sell and dispose of such real and personal estate or debts for the benefit of the Creditors under the Commission; and such sale shall be valid against the said extent, and all persons claiming under it; and any person to whom the said real and personal estate or debts shall be bargained and sold, granted or assigned, by the Commissioner, shall have and may recover the same against any person who shall detain the same.

Taken from 21 Jac. 1, c. 19, § 10, Eng., *rep. by* 6 Geo. 4, *above.*

This was new in Ireland. See s. 126 of this Act and note at foot thereof.

Goods in possession of Bankrupt as reputed owner.

6 Geo. 4, c. 16, § 72, Eng. comg. 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance, with amendments,* § 125 *of same, from* 11 *Oct.* 1849.

1 [Bankrupt]

2 [Commissioners]

LXXXVI. And be it enacted, That if any [trader][1] at the time he becomes Bankrupt shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the [Commissioner][2] shall have power to sell and dispose of the same for the benefit of the Creditors under the Commission; provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, duly registered according to the provisions of an Act of Parliament made in the fourth year of the reign of King George the Fourth, intituled "An Act for the registering of vessels."

Taken from 21 Jac. 1, c. 19, § 11, Eng., *rep. by* 6 Geo. 4, *above.*

This section commences with an enactment to be found in 11 & 12 Geo. 3, c. 8, s. 9, Ir., hereby repealed.

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Corresp. Enactments.

(The verbal differences are within brackets.)

Conveyance during Insolvency void, except as herein.

LXXXVII. And be it enacted, That if any Bankrupt, being at the time insolvent, shall (except upon the marriage of any of his children, or for some valuable consideration,) have conveyed, assigned, or transferred to any of his children or any other person any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or persons, or into any other person's name, the [Commissioner][1] shall have power to sell and dispose of the same as aforesaid; and every such sale shall be valid against the Bankrupt and such children and persons as aforesaid, and against all persons claiming under him.

Same Act, § 73, Eng., *re-enacted in substance* § 106 *of same, from* 11 *Oct.* 1849.

[1] [Commissioners]

Taken from 1 Jac. 1, c. 15, § 5, Eng., *rep. by* 6 Geo. 4 *above.*

This was a re-enactment of 11 & 12 Geo. 3, c. 8, s. 7, Ir., repealed hereby, adding the words "being at the time insolvent," and including the delivery or transfer of bills, bonds, &c., in addition to such as were therein set forth.

Distress not available beyond one year.

LXXXVIII. And be it enacted, That no distress for rent made and levied after any act of Bankruptcy upon the goods or effects of any Bankrupt (whether before or after the issuing of the Commission) shall be available for more than one year's rent accrued prior to the date of the Commission, but the landlord or party to whom the rent shall be due shall be allowed to come in as a Creditor under the Commission for the overplus of the rent due, and for which the distress shall not be available.

Same Act, § 74, Eng., *re-enacted in substance* § 129 *of same.*

Verbatim.

This was new in England.

This was new in Ireland.

Bankrupt, when not liable for rents or covenants.

LXXXIX. And be it enacted. That any Bankrupt entitled to any lease or agreement for a lease, if the

Same Act, § 75, *re-enacted in substance* § 145 *of same.*

(*The verbal differences are within brackets.*)

Verbatim.

assignees accept the same, shall not be liable to pay any rent accruing after the date of the Commission, or to be sued in respect of any subsequent nonobservance or nonperformance of the conditions, covenants, or agreements therein contained, and, if the assignees decline the same, shall not be liable as aforesaid in case he deliver up such lease or agreement to the lessor or such person agreeing to grant a lease within fourteen days after he shall have had notice that the assignees shall have declined as aforesaid; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such lease or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply by petition to the Lord Chancellor, who may order them so to elect, and deliver up such lease or agreement, in case they shall decline the same, and the possession of the premises, or may make such other order therein as he shall think fit.

Taken from 49 Geo. 3, c. 121, § 19, U. K., *rep. by* 6 Geo. 4, *above as to England, and by* 6 Wm. 4, *herein as to Ireland. See* p. 200, *ante.*

An amendment of 49 Geo. 3, c. 121, s. 19, U. K., repealed hereby as to Ireland, by limiting the accruing rent to the date of the Commission, and discharging the Bankrupt irrespective of the consent of the assignees.

Vendor may compel Assignee to Elect.

6 Geo. 4, c. 16, § 76, Eng., *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic., c. 106, Eng., *re-enacted in substance* § 146 *of same, from* 11 *Oct.* 1849.

Verbatim.

This was new in England.

XC. And be it enacted, That if any Bankrupt shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees of such Bankrupt shall not (upon being thereto required) elect whether they will abide by and execute such agreement or abandon the same, shall be entitled to apply by petition to the Lord Chancellor, who may thereupon order them to deliver up the said agreement and the possession of the premises to the vendor or person claiming under him, or may make such other order therein as he shall think fit.

(The verbal differences are within brackets.)

This enactment was new in Ireland as well as England at the passing of each.

Assignees may execute Bankrupt's powers.

XCI. And be it enacted, That all powers vested in any Bankrupt which he might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice) may be executed by the assignees, for the benefit of the Creditors, in such manner as the Bankrupt might have executed the same.

Same Act, § 77, *re-enacted in substance*, § 147 *of same.*

Verbatim.

Taken from 3 Geo. 4, c. 81, § 3, Eng., *rep. by* 6 Geo. 4, *above.*

This was new in Ireland as well as England.

Bankrupt to join in Conveyance.

XCII. And be it enacted, That it shall be lawful for the Lord Chancellor, upon the petition of the assignees, or of any purchaser from them of any part of the Bankrupt's estate, if such Bankrupt shall not try the validity of the Commission, or if there shall have been a verdict at law establishing its validity, to order the Bankrupt to join in any conveyance of such estate or any part thereof, and if he shall not execute such conveyance within the time directed by the order, such Bankrupt, and all persons claiming under him, shall be stopped from objecting to the validity of such conveyance, and all estate, right, or title which such Bankrupt had therein shall be as effectually barred by such order as if such conveyance had been executed by him.

Same Act, § 78, *re-enacted in substance*, § 148 *of same.*

Verbatim.

Taken from 3 Geo. 4, c. 81, §§ 3, 4, Eng., *rep. by* 6. Geo. 4, *above.*

This was a new enactment in Ireland, and the corresponding section was taken from a recent provision in 3 Geo. 4, c. 81.

Bankrupt Trustee must transfer.

XCIII. And be it enacted, That if any Bankrupt shall, as trustee, be seised, possessed of, or entitled to, either alone or jointly, any real or personal estate, or

Same Act, § 79, *re-enacted*, § 130 *of same.*

(The verbal differences are within brackets.)

Verbatim.

any interest secured upon, or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any government stock, funds, or annuities, or any of the stock of any public company, either in England, Scotland, or Ireland, it shall be lawful for the Lord Chancellor, on the petition of the person or persons entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, stock, funds, or annuities to such person or persons as the Lord Chancellor shall think fit, upon the same trusts as the same estate, interest, stock, funds, or annuities were subject to before the Bankruptcy, or such of them as shall be then subsisting and capable of taking effect, and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof, as the Lord Chancellor shall direct.

Under 36 Geo. 3, c. 90, § 1, Eng., *rep., the Chancellor had a power of directing the transfer of stock standing in Bankrupt's name.*

This also was new in Ireland.

Bankrupt beneficially entitled to stock, &c.

6 Geo. 4, c. 16, § 80, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance,* § 128 *of same, from* 11 Oct. 1849.

XCIV. And be it enacted, That if any such Bankrupt shall have any government stock, funds, or annuities, or any of the stock of any public company either in England, Scotland, or Ireland, standing in his name, in his own right, it shall be lawful for the [Commissioner][1] by writing under [his][2] hand, to order all persons, whose act or consent is thereto necessary, to transfer the same into the name of the assignees, and to pay all dividends upon the same to such assignees; and all such persons, whose act or consent is so necessary as aforesaid, are hereby indemnified for all things done or permitted pursuant to such order.

See 36 Geo. 3, c. 90, §§ 2 & 3, Eng., *rep. by* 6 Geo. 4, *above.*

This provision did not exist before in Ireland.

[1] [Commissioners]
[2] [their]

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Contracts, &c., without notice, when valid.

XCV. And be it further enacted, That all conveyances by, and contracts and all other dealings and transactions by and with, any Bankrupt, bona fide made and entered into more than two calendar months before the date and issuing of the Commission against him, and all executions and attachments against the lands and tenements, or goods and chattels of such Bankrupt, bona fide executed or levied more than two calendar months before the issuing of such Commission, shall be valid, notwithstanding any prior act of Bankruptcy by him committed, provided the person or persons so dealing with such Bankrupt, or at whose suit, or on whose account such execution or attachment shall have issued, had not at the time of such conveyance, contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of Bankruptcy by him committed; provided also, that where a Commission has been superseded, if any other Commission shall issue against any person or persons comprised in such first Commission within two calendar months next after it shall have been superseded, no such conveyance, contract, dealing, or transaction, execution or attachment, shall be valid, unless made, entered into, executed, or levied more than two calendar months before the issuing the first Commission.

This is one of those enactments in Bankruptcy which endeavours to provide against fraudulent preference and sustain *bonâ fide* negociations. The entire of the matters legislated for in this and the six following sections depend on *what is or is not notice.* A definition of constructive notice is given in s. 97, *post*, which leaves the matter nearly as it found it. Under that section a person is presumed to have notice of an Act of Bankruptcy after the advertisement of the adjudication appears in the Gazette. This would be intelligible and unproductive of difficulty if it stopped there; but a proviso is added which opens a wide field to litigation—namely, "and the person or persons to be affected *by such notice* may reasonably be presumed to have seen the same." That therefore made no change in the Law, inasmuch as

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

Same Act, § 81, *re-enacted in substance* § 133 *of same.*

Verbatim.

Taken from 46 Geo. 3, c. 135, § 1, Eng.; 49 Geo. 3, c. 121, § 2, U. K., *both rep. by* 6 Geo. 4, *above.*

CORRESP. ENACTMENTS.

(The verbal differences are within brackets).

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the same degree of proof prior to the passing of that enactment would lead to the same inference, especially as it had been laid down that notice of an Act of Bankruptcy may be proved by the ordinary evidence of the parties having a knowledge of the fact either express or to be implied from circumstances, 1 Arch. B. L., 307, *Ramsay* v. *Eaton*, 10 M. & W. 22, 6 Jur. 489. But when a creditor pressed a trader to deposit bills of exchange as security, which he did, saying, "It is of no use; I have committed Acts of Bankruptcy;" this was held clearly a notice under s. 82 of 6 Geo. 4, c. 16 (the next corresponding section below): *Arthur* v. *Whitworth*, 6 Jur. 323.

Payments bonâ fide, by or to Bankrupt without notice, valid.

6 Geo. 4, c. 16, § 82, Eng. *com.* 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 133 *of same, from* 11 Oct. 1849.

Verbatim.

Taken from 1 Jac. 1, c. 15, § 14; 19 Geo. 2, c. 32, § 1, both Eng., 46 Geo. 3, c. 135, § 1, U. K., *all rep. by* 6 Geo. 4, *above.*

XCVI. And be it enacted, That all payments really and bona fide made or which shall hereafter be made by any Bankrupt, or by any person on his behalf, before the date and issuing of the Commission against such Bankrupt, to any Creditor of such Bankrupt, (such payment not being a fraudulent preference of such Creditor,) shall be deemed valid, notwithstanding any prior act of Bankruptcy by such Bankrupt committed; and all payments really and bona fide made or which shall hereafter be made to any Bankrupt before the date and issuing of the Commission against such Bankrupt shall be deemed valid, notwithstanding any prior act of Bankruptcy by such Bankrupt committed, and such Creditor shall not be liable to refund the same to the assignees of such Bankrupt, provided the person so dealing with the said Bankrupt had not at the time of such payment by or to such Bankrupt notice of any act of Bankruptcy by such Bankrupt committed.

See note to last section. Also 11 & 12 Geo. 3, c. 8, ss. 19. 60, Ir., repealed hereby.

What is notice.

Same Act, § 83, Eng.

XCVII. And be it enacted, That the issuing of a Commission shall be deemed notice of a prior act of Bankruptcy (if an act of Bankruptcy had been actually committed before the issuing the Commission,) if the adjudication of the *Bankruptcy of the*[1] person or persons against whom such Commission has issued shall have been notified in the [Dublin][2] Gazette, and the person or persons to be affected by such notice may reasonably be presumed to have seen the same.

See note to section 95.

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding section.*

[2] [London]

See 46 Geo. 3, c. 135, § 3, Eng., 49 Geo. 3, c. 121, § 1, U. K., *both rep. by* 6 Geo. 4, *above.*

Money or Goods paid or delivered without notice.

XCVIII. And be it enacted, That no person or body corporate or public company, having in his or their possession or custody any money, goods, wares, merchandize, or effects belonging to any Bankrupt, shall be endangered by reason of the payment or delivery thereof to the Bankrupt or his order, provided such person or *body corporate or*[1] company had not at the time of such delivery or payment notice that such Bankrupt had committed an act of Bankruptcy.

See note to section 95.

Same Act, § 84,

[1] *The words in italics are not in the corresponding section.*

Notice to Agent of Public Company, sufficient.

XCIX. And be it enacted, That if any accredited agent of any body corporate or public company shall have had notice of any act of Bankruptcy, such body corporate or company shall be thereby deemed to have had such notice.

See note to section 95.

Same Act, § 85, *re-enacted* § 87 *of same.*

Verbatim.

See 56 Geo. 3, c. 137, § 2, Eng., *rep. by* 6 Geo. 4, *above.*

Bonâ fide Purchases not impeachable.

C. And be it enacted, That no purchase from any Bankrupt bona fide and for valuable consideration, where the purchaser had notice at the time of such purchase of an act of Bankruptcy by such Bankrupt committed, shall be impeached by reason thereof, unless the Commission against such Bankrupt shall have been

Same Act, § 86, *re-enacted* § 134 *of same.*

Verbatim.

See 21 Jac. 1, c. 19, § 14, Eng., *rep. by* 6 Geo. 4, *above.*

(*The verbal differences are within brackets.*)

sued out within twelve calendar months after such act of Bankruptcy.

No person is any longer liable to be made a Bankrupt after a lapse of twelve months from the act of Bankruptcy committed, 12 & 13 Vic. c. 107, s. 7, Ir., p. 88, *ante.* This section is therefore inoperative henceforth.

Titles to Property sold under Commission.

6 Geo. 4, c. 16, § 87, Eng. *comg.* 1 *Sept.* 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 131 *of same, from* 11 Oct. 1849.

Verbatim.

This was new in England.

CI. And be it enacted, That no title to any real or personal estate sold under any Commission or under any order in Bankruptcy shall be impeached by the Bankrupt, or any person claiming under him, in respect of any defect in the suing out of the Commission, or in any of the proceedings under the same, unless the Bankrupt shall have commenced proceedings to supersede the said Commission, and duly prosecuted the same, within twelve calendar months from the issuing thereof.

This was new in Ireland as well as England.

Assignees may compound, &c.

Same Act, § 88, *re-enacted in substance* § 158 *of same.*

CII. And be it enacted, That the assignees, with the consent of the major part in value of the Creditors who shall have proved under the Commission, present at any meeting, whereof, and of the purport whereof, twenty-one days notice shall have been given in the [Dublin][1] Gazette, may compound with any debtor to the Bankrupt's estate, and take any reasonable part of the debt in discharge of the whole, or may give time or take security for the payment of such debt, or may submit any dispute between such assignees and any persons concerning any matter relating to such Bankrupt's estate to the determination of arbitrators, to be chosen by the assignees and the major part in value of such Creditors, and the party with whom they shall have such dispute; and the award of such arbitrators shall be binding on all the Creditors; and the assignees

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[1] | London |

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are hereby indemnified for what they shall do according to the directions aforesaid; and no suit in equity shall be commenced by the assignees without such consent as aforesaid; provided that if one third in value or upwards of such Creditors shall not attend at any such meeting (whereof such notice shall have been given as aforesaid) the assignees shall have power, with the consent of the Commissioner[2] testified in writing under his hand,[3] to do any of the matters aforesaid.

A provision to this effect existed under 11 & 12 Geo. 3, c. 8, ss. 51, 52, 53, Ir., rep. hereby. A general authority given by the creditors will not be sufficient; the consent must be given specifically for each particular case. Per Lord Kenyon, *Nerot* v. *Wallace*, 3 T. R., 23; Ex p. *Whitchurch*, 1 Atk. 90. 210. Under the corresponding section it was ruled that that section did not prohibit assignees from instituting a suit without the consent of creditors, but only rendered liable for the consequences. *Jones* v. *Yates*, 3 Y. & J. 337; *Piercy* v. *Roberts*, 1 M. & K., 4. See 1 Arch. B. L. 476; Darley's Statutes, 1836, p. 264.

Assignee of Bankrupt Partner, may sue in name of Firm.

CIII. And be it enacted, That in any Commission against any one or more member or members of a firm, the Lord Chancellor may, upon petition, authorize the assignees to commence or prosecute any action at law or suit in equity in the names of such assignees and of the remaining partner or partners, against any debtor of the partnership, and *thereupon such assignees*[1] may obtain such judgment, decree, or order therein, as if such action or suit had been instituted with the consent of such partner or partners; and if such partner or partners shall execute any release of the debt or demand for which such action or suit is instituted such release shall be void: provided that every such partner, if no benefit is claimed by him by virtue of the said proceedings, shall be indemnified against the payment of any costs in respect of such action or suit; and that

Corresp. Enactments.

(The verbal differences are within brackets.)

[2] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

Taken from 5 Geo. 2, c. 30, §§ 34, 35, 38, Eng., *rep. by* 6 Geo. 4, *above.*

Same Act, § 89, *re-enacted in substance* § 152 *of same.*

[1] *The words in italics are not in the corresponding section.*

(The verbal differences are within brackets.)

it shall be lawful for the Lord Chancellor, upon the petition of such partner, to direct that he may receive so much of the proceeds of such action or suit as the Lord Chancellor shall think fit.

See 3 Geo. 4, c. 81, § 11, Eng., *rep. by* 6 Geo. 4, *above.*

This was new in Ireland. The corresponding section was an alteration in many respects of the section of 3 Geo. 4, cited in margin above. Where assignees had no equity an injunction was granted to stay: 4 Dea. & Ch. 211. For actions under joint Commission, see Al. & Nap. 62. 86; Smith & B. 156.

This section is amended by 12 & 13 Vic. c. 107, s. 43, Ir., (p. 122, *ante*), by enabling the assignees to proceed with the leave of the Commissioner instead of the Lord Chancellor.

In certain actions no proof of Petitioning Creditor's Debts, Trading, &c., unless Notice.

6 Geo. 4, c. 16, § 90, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 234 *of same, from* 11 Oct. 1849.

[1] [Commissioners or]

[2] *The word* "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

[3] [as such Commissioner]

CIV. And be it enacted, That in any action by or against any assignee, or in any action against any [ ][1] person acting under the warrant of the [Commissioner][2] for any thing done [ ][3] under such warrant, no proof shall be required at the trial of the petitioning Creditors debt or debts, or of the trading, or act or acts of Bankruptcy respectively, unless the other party in such action shall, if defendant, at or before the time of pleading, and, if plaintiff, before issue joined, give notice in writing to such assignee [or][1] other person that he intends to dispute some, and which of such matters; and in case such notice shall have been given, if such assignee [or][1] other person shall prove the matter so disputed, or the other party admit the same, the judge before whom the cause shall be tried may (if he think fit) grant a certificate of such proof or admission; and such assignee [or][1] other person shall be entitled to the costs, to be taxed by the proper officer, occasioned by such notice; and such costs shall, if such assignee [or][1] other person shall obtain a verdict, be added to his costs, and if the other party shall obtain a verdict, shall be deducted from the costs, which such

An amendment of 49 Geo. 3, c. 121, § 10, U. K., *rep., as to England, by* 6 Geo. 4, *above.*

other party would otherwise be entitled to receive from such Assignee [or][1] other person.

(The verbal differences are within brackets.)

[1] [Commissioners or]

A provision of a like nature existed under 49 Geo. 3, c. 121, s. 10, U. K., rep. hereby. This was an amendment by the introduction of the words "acting under the warrant of the Commissioner, &c. This section does not contain the provision respecting actions against the Commissioner in the corresponding section, such a provision being unnecessary in Ireland.

Same in Suits in Equity.

CV. And be it enacted, That in all suits in equity by or against the assignee, no proof shall be required at the hearing of the petitioning Creditor's debt or debts, or of the trading, or of the act or acts of Bankruptcy respectively, as against any of the parties in such suit, except such parties as shall within ten days after [issue joined][1] give notice in writing to the assignees of his or their intention to dispute some and which of such matters; and where such notice shall have been given, if the assignees shall prove the matter so disputed, the costs occasioned by such notice, to be taxed by the proper officers, shall, if the Court see fit, be paid by the party or parties so giving such notice as aforesaid; and the service of such notice may be proved by affidavit upon the hearing of the cause.

Same Act, § 91, *re-enacted in substance*, § 235.

[1] [rejoinder]

Taken from § 11 of 49 Geo. 3, *last cited.*

The same observations apply to this section as to the last *mutatis mutandis.*

Depositions conclusive Evidence.

CVI. And be it enacted, That if the Bankrupt shall not, if he was within the United Kingdom at the issuing of the Commission, within two calendar months after the adjudication, or, if he was out of the United Kingdom, within twelve calendar months after the adjudication, have given notice of his intention to dispute the Commission, and have proceeded therein with due diligence, the depositions taken before the Commis-

Same Act, § 92, *re-enacted in substance* § 238 *of same.*

(The verbal differences are within brackets.)

[1] *The words in italics are not in the corresponding section.*

[2] [actions at law or suits]

This was new in England.

sioner at the time of or previous to the adjudication *of Bankruptcy,*[1] of the petitioning Creditor's debt or debts, and of the trading, and act or acts of Bankruptcy, shall be conclusive evidence of the matters and things therein respectively contained, *so far as relates to the sufficiency of the petitioning Creditors debt or debts, trading, and act or acts of Bankruptcy,*[1] in all [suits at law][2] in Equity brought by the assignees for any debt or demand for which the Bankrupt might have sustained any action or suit.

This was new in Ireland. It is now amended by 12 & 13 Vic. c. 107, s. 26, Ir., which see page 106, *ante*.

Defendant may pay money into Court.

6 Geo. 4, c. 16, § 93, Eng.; *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic, c. 106, Eng. *re-enacted in substance* § 158 *of same, from* 11 Oct. 1849.

This was new in England.

CVII. And be it enacted, That if the assignees commence any action or suit for any money so due to the Bankrupt before the time allowed as aforesaid for him to dispute the Commission shall have elapsed, any defendant in any such action or suit shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the Court in which such action or suit is brought, and all proceedings with respect to the money so paid into Court shall thereupon be stayed, and after the time aforesaid shall have elapsed the assignees shall have the same paid to them out of Court.

This was new in Ireland. And now see 12 & 13 Vic. c. 107, s. 27, Ir., and note thereto, p. 108, *ante*.

Those paying Discharged, although Commission Superseded.

Same Act, § 94, *re-enacted in substance* § 155 *of same.*

CVIII. And be it enacted, That all persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the Commission be afterwards superseded, from all demands which may thereafter be

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made in respect of the same by the person or persons against whom such Commission issued, and all persons claiming under him or them; and all persons who shall, without action or suit, bona fide deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person or persons as aforesaid in respect of the same, or any person claiming under him or them, provided such notice to try the validity of the Commission had not been given [and][1] proceeded in within the time and in manner aforesaid.

This was new in Ireland. See now ss. 26 and 27 of 12 & 13 Vic., c. 107, Ir., pp. 106. 108, *ante*.

Office for Registering.

CIX. And be it enacted, That all things done pursuant to the Act passed in the [eleventh and twelfth years of King George the Third,][1] and hereby repealed, whereby it was enacted that the Lord Chancellor should appoint a place where all matters relating to Commissions of Bankruptcy should be entered of record, and should appoint a person to have the custody thereof, be hereby confirmed; and the [person appointed by virtue of the said Act of the eleventh and twelfth years of King George the Third][2] shall, by himself or his deputy, to be approved of by [the][3] Lord Chancellor, enter of record all matters relating to Commissions *of Bankruptcy*,[4] and have the custody of the entries thereof; and [he][5] and his deputy, *and their successors, who shall be from time to time appointed by the Lord Chancellor as a vacancy shall arise*,[4] shall continue in their respective offices so long as they shall respectively behave themselves well, and shall not be removed, except by order in writing under the hand of the Lord Chancellor, on sufficient cause therein specified;* [and][6] that all Commissions of Bankruptcy issued before [this

Corresp. Enactments.

(The verbal differences are within brackets.)

[1] [and been]

This was new in England.

Same Act, § 95.

[1] [fifth year of the reign of King George the Second]

[2] [Lord Chancellor shall be at liberty from time to time by writing under his hand to appoint a proper person who]

[3] [the said]

[4] *The words in italics are not in the corresponding section.*

[5] [the person so to be appointed]

* *This ends* § 95 of 6 Geo. 4.

2 & 3 Wm. 4, c. 114, § 2, Eng. comg., 15 Aug. 1832, (*quere rep.* 1849.)

[6] [provided always, and be it declared and enacted]

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(The verbal differences are within brackets.)

[7] [the first day of September, one thousand eight hundred and twenty-five]

[8] [upon or since that day]

* § 3 of same.

[9] [provided always, and be it further enacted, that]

[10] [shall have the same effect as if such Commission had been issued after the said first day of September, one thousand eight hundred and twenty-five, and]

The substance of this section is found in 2 & 3 Wm. 4, *above*, § 1.

The same provision existed in 11 & 12 Geo. 3, c. 8, § 60, Ir., *rep. hereby.*

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Act shall take effect,][7] and all depositions and other proceedings relating to such Commissions directed to be enrolled and actually entered of record [before this Act shall take effect,][8] shall be deemed and taken to have been well and effectually entered of record;* [and][9] the certificate of such entry, purporting to be signed by the person appointed to enter such proceedings, or by his deputy, [ ][10] shall be received in evidence, without proof of the appointment or handwriting of such person.

See 12 & 13 Vic. c. 107, s. 84, Ir., p. 157, and note at foot, and also s. 102 of same, p. 175 and note, and s. 117 of same, p. 186. These notes will answer for this and the following three sections. By 1 Vic. c. 48, s. 8, Ir., the Lord Chancellor has a power to appoint an assistant Registrar, if it appear to him "necessary for the proper discharge of the business of the Court," at a salary not exceeding £300 per annum. The enactment above referred to in the text is 11 & 12 Geo. 3, c. 8, s. 57, Ir., repealed hereby.

Custody of Records.

CX. And be it enacted, That the person so appointed by virtue of the said recited Act of the eleventh and twelfth years of King George the Third, and his successors, shall have the custody and care of all the said records, and of all other records to be entered in pursuance of this Act; and shall, by himself or his deputy,[1] enter of record all matters and proceedings in Bankruptcy which by this Act, or any order made in pursuance of it, are or may be directed or required to be entered of record upon payment of such fees as before the passing of this Act he was entitled to receive for the like business.

The 2 & 3 W. 4, c. 114, Eng., sets out with reciting the defectiveness of 6 Geo. 4, c. 16, Eng., and 1 & 2 W. 4, c. 56, Eng., the former of which had made provision for entering of record, by a person to be appointed for that purpose, or his deputy, depositions, proceedings, or other matters relating to Commissions of Bankruptcy; and the latter for the like entry, filing, and entering of record of "fiats" prosecuted in the Bankruptcy Court. (*Fiats* and the *Bankruptcy Court* as a court of record having been the creations of that act of 1 & 2 W. 4, c. 56.) The act of 6 Geo. 4, omitted to provide for making the depositions or office copies of the records evidence. 1 & 2 W. 4, omitted to provide for recording the "fiats" prosecuted in any other Court. The act 2 & 3 W. 4, c. 114, Eng., then proceeds to supply those omissions. See note to last section. As to fees, see s. 11 of this act, p. 206, *ante*, where the Chancellor has a power to lessen same.

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Commission, Adjudication, &c. to be entered of record.

CXI. And be it enacted, [That][1] after this Act shall [take][2] effect, no Commission of Bankruptcy, adjudication of Bankruptcy, [ ][3] *certificate of the appointment or choice of assignees,*[4] or certificate of conformity, shall be received as evidence in any Court of Law or Equity, unless the same shall have been [so][5] entered of record as aforesaid; and [every such instrument shall be so entered of record, and the certificate of such entry indorsed thereon, upon the application or behalf of any party interested therein, and on payment of such fees as before the passing of this Act were by law payable for the like business,][6] without any petition or writing presented for that purpose; and the Lord Chancellor may, upon petition, direct any depositions, proceedings, or other matters relating to Commissions of Bankruptcy to be entered of record as aforesaid, [on the payment of such fees as before the passing of this Act were by law payable for the like business;][7] and all persons shall be at liberty to search for any of the matters so entered of record as aforesaid; provided that on the production in evidence of any instrument so directed to be entered of record, having the certificate thereon purporting to be signed by the person so appointed as aforesaid, or his deputy, *or their successors,*[4] the same shall, without any proof of such signature, be received as evidence of such instrument having been so entered of record as aforesaid; *and the fee of one shilling and no more shall be payable to the person so appointed as aforesaid, and his successors, for every search made for matter so entered of record as aforesaid.*[4]

See note to section 109, *ante*. As to matters of evidence, see preceding section and 12 & 13 Vic. c. 107, ss. 84. 102. 114, Ir., pp. 157. 175. 185, *ante*. As to fees, s. 5, *ante*, and s. 115 of 12 & 13 Vic. c. 107, p. 185.

Corresp. Enactments.

(The verbal differences are within brackets.)

6 Geo. 4, c. 16, § 96, Eng. *com.* 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 236 *of same, from* 11 Oct. 1849.

[1] [that in all Commissions issued]

[2] [have taken]

[3] [by the Commissioners or assignment of the personal estate of the Bankrupt]

[4] *The words in italics are not in the corresponding section.*

[5] [first so]

[6] [the person so appointed to enter matters of record as aforesaid shall be entitled to receive for such entry of every such Commission, adjudication of Bankruptcy, assignment or order for vacating the same respectively having the certificate of such entry endorsed thereon respectively, the fee of two shillings each; and for the entry of every certificate of conformity having the like certificate endorsed thereon, six shillings; and every such instrument shall be entered of record upon the application of or on behalf of any party interested therein and on payment of the several fees aforesaid]

[7] [and also appoint such fee and reward for the labour therein of the person so appointed as aforesaid as the Lord Chancellor shall think reasonable]

This was an amendment of 5 Geo. 2, c. 3. § 41, Eng.; *rep. by* 6 Geo. 4, *above.*

And see also 2 & 3 Wm. 4, c. 114, § 8, Eng.,

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

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6 Geo. 4, c. 16, § 97, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 236 *of same, from* 11 Oct. 1849.

Verbatim.

Taken from 5 Geo. 2, c. 30, § 41, Eng., 3 Geo. 4 c. 81, § 7, Eng., *both rep. by* 6 Geo. 4, *above.*

Office copies when Evidence.

CXII. And be it enacted, That in every action, suit, or issue, office copies of any original instrument or writing filed in the office, or officially in the possession of the Lord Chancellor's secretary of Bankrupts, shall be evidence to be received of every such original instrument or writing respectively; and if any such original instrument or writing shall be produced on any trial, the costs of producing the same shall not be allowed on taxation, unless it appears that the production of such original instrument or other writing was necessary.

See three preceding sections and notes and references.

The substance generally of provision in 2 & 3 Wm. 4, c. 114, § 7, Eng., comg. 15 Aug. 1832, *rep.* (?) *by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 242 *of same, from* 11 Oct. 1849.

**sic.*

The above provision had been re-enacted 5 & 6 Vic. c. 122, § 25, Eng., *rep. by* 12 & 13 Vic. c. 106, *above.*

In case of Death of Witnesses.

CXIII. And be it enacted, That in the event of the death of any of the witnesses deposing to the petitioning Creditor's debt, trading, or act of Bankruptcy, under any Commission heretofore issued, or heretofore* to be issued, the depositions of such witnesses, or a copy thereof, duly authenticated according to the provisions of the said recited Acts or of this Act, shall be evidence of the matters and things therein respectively contained, so far as relates to the sufficiency of the petitioning Creditor's debt, trading, and act of Bankruptcy, in all proceedings at law or in equity, as fully and effectually, as if the said matters and things had been deposed to by the same witnesses if living.

See s. 111 above and note.

2 & 3 Wm. 4, c. 114, § 9, Eng., comg. 15 Aug. 1832; *rep.* (?) *by* 12 & 13 Vic. c. 106 Eng., *from* 11 Oct. 1849.

[1] [fiat]

[2] [assignment, appointment of assignees certificate]

Proceedings, purporting to be signed and sealed, receivable in Evidence.

CXIV. Provided always, and be it further enacted, That upon the production in evidence of any Commission, [ ][1] adjudication, [certificate of appointment or choice of assignees, certificate of conformity,][2] deposi-

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tion, or other proceeding in Bankruptcy, purporting to be *signed and*[3] sealed [by the said Commissioner,][4] or of any writing purporting to be a copy of any such document, and purporting to be *signed and*[3] sealed as aforesaid, the same shall be received as evidence of such documents respectively, and of the same having been so entered of record as aforesaid, without any further proof thereof: provided nevertheless, that all [Commissions,][5] and proceedings under the same, which may have been entered of record before the passing of this Act, shall and may, upon the production thereof, with the certificate thereon purporting to be signed by the person so appointed to enter proceedings in Bankruptcy, or by his deputy, be received as evidence of the same having been duly entered of record; any thing herein contained to the contrary notwithstanding.

See s. 109 and notes.

CORRESP. ENACTMENTS.

(The verbal differences are within brackets.)

[3] *The words in italics are not in the corresponding section.*

[4] [with the seal of the said Court of Bankruptcy]

[5] [fiats]

Where Debts not over £20—Evidence.

CXV. 'And whereas great difficulty has arisen to the assignees of Bankrupts in the recovery of small debts;' be it enacted, That in all cases where the debt sought to be recovered by the assignees shall not exceed twenty pounds, the certificate of the appointment or choice of assignees, entered of record as aforesaid, or a copy thereof signed and sealed as aforesaid, shall be conclusive evidence of the issuing of the Commission, and of the person named in such certificate being a Bankrupt, and of the due appointment or choice of such assignees.

19 & 20 Geo. c. 25, § 4, Ir., comg. 1 Aug. 1780, *rep. by* 6 Wm. 4, c. 14, *herein.*

Verbatim.

See the three preceding sections, the provisions in which were all contained in 11 & 12 Geo. 3, c. 8, s. 56, Ir., repealed hereby.

No Stamp or other government, or Auction Duty.

CXVI. And be it further enacted, That after this Act shall have come into effect, all Commissions of

6 Geo. 4, c. 16, § 98, Eng., comg. 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance,* § 138 *of same, from* 11 *Oct.* 1849.

(The verbal differences are within brackets.)

[1] [London]

This was new in England.

Bankrupt, and also all deeds, conveyances, assignments, surrenders, admissions, and other assurances of, or to, or relating solely to any freehold, leasehold, copyhold, or customary messuages, lands, or tenements, or any mortgage, charge, or other incumbrance upon, or any estate, right or interest of, and in any messuages, lands, tenements, or personal estate, being the estate of, or belonging to any Bankrupt or Bankrupts, or part or parcel thereof, and which after the execution of such deeds, conveyances, assignments, surrenders, or assurances respectively shall, either at law or in equity, be or remain the estate and property of such Bankrupt or Bankrupts, or of the assignee or assignees appointed or chosen by virtue of the Commission issued against him or them respectively, and also all powers of attorney, writs of supersedeas and procedendo, certificate of conformity, affidavits, and all other instruments and writings whatsoever relating solely to the estate or effects of any Bankrupt or Bankrupts, or any part thereof, or to any proceedings under any Commission, and all advertisements inserted in the [Dublin][1] Gazette relating solely to matters of Bankruptcy, shall not be liable to any stamp duty or any other government duty whatsoever; and all sales of any real or personal estate of any Bankrupt or Bankrupts shall not be liable to any auction duty.

This exemption from stamp duty is re-enacted in 12 & 13 Vic. c. 107, s. 115, p. 185, *ante.* It concludes with larger enacting words than the above in the following :—"Shall not be liable to any stamp-duty or other duty whatsoever." Its provisions are confined to proceedings under that Act.

6 Geo. 4, c. 16, § 99, Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 254 *of same, from* 11 Oct. 1849.

[1] [Commissioners]

Punishment of Perjury, &c.

CXVII. And be it enacted, That any Bankrupt or other person who shall in any examination before the [Commissioner,][1] or in any affidavit or deposition authorized or directed by the present or any Act hereby repealed, wilfully and corruptly swear falsely, being convicted thereof, shall suffer the pains and penalties in force against wilful and corrupt perjury; and where any oath is hereby directed or required to be taken or administered, or affidavit to be made, by or to any party, such party, if a Quaker *or Moravian or Separatist,*[2] shall or may make solemn affirmation *or declaration;*[2] and such Quaker, *Moravian, or Separatist, as the case may be,*[2] shall incur such danger or penalty for refusing to make such solemn affirmation *or declaration*[2] in such matters, when thereto required, as is hereby provided against persons refusing to be sworn; and all Quakers, *Moravians, or Separatists*[2] who shall in any such affirmation *or declaration*[2] knowingly and wilfully affirm or declare falsely shall suffer the same penalties as are provided against persons guilty of wilful and corrupt perjury; and all persons before whom oaths or affidavits are hereby directed to be made are respectively empowered to administer the same, and also such solemn affirmation *or declaration*[2] as aforesaid.

As to punishment for perjury, see 12 & 13 Vic. c. 107, s. 73, p. 149, *ante*. Before whom affidavits are now to be sworn, see s. 69 of same. See 11 & 12 Geo. 3, c. 8, s. 38, Ir., repealed hereby.

(The verbal differences are within brackets.)

[2] *The words in italics are not in the corresponding section.*

Taken from 5 Geo. 2, c. 30, § 29, Eng., 3 Geo. 4, c. 81, § 6, Eng., *both rep. by* 6 Geo. 4, *above.*

Application of Forfeitures.

CXVIII. And be it enacted, That all sums of money forfeited under this Act, or by virtue of any conviction for perjury committed in any oath, *affirmation, or declaration*[1] hereby directed or authorized, may be sued for by the assignees in any of his Majesty's Courts of Record; and the money so recovered (the charges of suit being deducted) shall be divided among the Creditors, *who shall not by reason thereof be incompetent*

Same Act, § 100, *re-enacted in substance* § 275 *of same.*

[1] *The words in italics are not in the corresponding section.*

witnesses in any proceedings for the recovery of such penalties.[1]

(*The verbal differences are within brackets.*)

[1] *The words in italics are not in the corresponding section.*

Taken from 13 Eliz., c. 7, § 8, 1 Jac. 1, c. 15, § 12, *both* Eng., *rep. by* 6 Geo. 4, *above.*

This was in 11 & 12 Geo. 3, c. 8, ss. 36. 38, Ir., hereby repealed. See a like enactment in 12 & 13 Vic. c. 107, s. 74, Ir., p. 149, *ante.*

Assignees to keep Books of Account.

6 Geo. 4, c. 16, § 101, Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance*, § 151 *of same, from* 11 Oct. 1849.

[1] *The words in italics are not in the corresponding section.*

[2] *The word* "Commissioner" *and all words governed by or relative to it, are in the plural number throughout this corresponding section.*

CXIX. And be it enacted, That the assignees shall keep an account wherein they shall enter all property of the Bankrupt received by *or vested in*[1] them, and all payments made by them, *or by order of the Commissioner*[1] on account of the Bankrupt's estate, which account every Creditor who shall have proved may inspect at all seasonable times; and it shall be lawful for the Commissioner[2] at all times, by writing under his hand[2] to summon the assignees before him, and require them to produce all books, papers, deeds, writings, and other documents relating to the Bankruptcy in their possession; and if such assignees so summoned shall not come before the Commissioner at the time appointed (having no impediment made known to the Commissioner, at the time of his sitting, and allowed by him,) it shall be lawful for the said Commissioner, by warrant under his hand and seal, directed to such person as he shall think fit, to cause such assignees to be brought before him; and upon their refusing to produce such books, deeds, writings, papers, or documents as aforesaid, it shall be lawful for the said Commissioner to commit the party so refusing to such prison as he shall think fit, there to remain, without bail, until such party shall submit himself to the said Commissioners.

Taken from 5 Geo. 2, c. 30, § 26, Eng., *rep. by* 6. Geo. 4, *above.*

And now as to assignees accounts, see official assignees, ch. 7, p. 71, *ante*, and the references.

6 Wm. IV. Cap. 14.

Corresp. Enactments.

(The verbal differences are within brackets.)

Creditors to Direct how and when Monies be paid in.

CXX. And be it enacted, That at the meeting of Creditors for the choice of assignees the major part in value of such Creditors there present may direct how, and with whom, and where the money received from time to time out of the estate of the Bankrupt shall be paid in and remain until it be divided; and if such Creditors shall not make such direction as aforesaid, the Commissioner shall, immediately after such choice, and at the same meeting, make such direction; but no money shall be directed to be paid into the hands of the Commissioner, or of the solicitor to the Commission, or into any banking house or other house of trade in which any such Commissioner or solicitor, or the assignees of the Bankrupt, is [or are an acting partner, manager, or cashier.][1]

Official Assignee to possess and receive all estate and effects in future; see p. 110, *ante*, s. 30, of 12 & 13 Vic. c. 107.

Same Act, § 102.

[1] [interested]

Money may be Invested in Exchequer Bills.

CXXI. And be it enacted, That the Commissioner may, as often as it shall appear to him expedient for the Bankrupt's estate, direct any money, part of such estate, to be invested in the purchase of Exchequer Bills *or in the public funds*,[1] for the benefit of the Creditors, and may direct where and with whom such Exchequer Bills shall be kept, and cause such Exchequer Bills to be sold when it shall appear to him expedient, and may direct the proceeds thereof to be again laid out in the purchase of Exchequer Bills *or in the public funds*,[1] or to be applied for the benefit of the Creditors, subject to the control of the Lord Chancellor.

See 12 & 13 Vic. c. 107, s. 30, Ir., p. 113, *ante*.

Same Act, § 103, *re-enacted in substance*, § 186 *of same*.

[1] *The words in italics are not in the corresponding section.*

See 49 Geo. 3, c. 121, § 7, U. K., *rep. as to England, by* 6 Geo. 4, *above*.

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(The verbal differences are within brackets.)

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Assignees not Investing according to Orders, 20 per cent.

CXXII. And be it enacted, That if any assignee shall retain in his hands or employ for his own benefit, or knowingly permit any co-assignee so to retain or employ, any sum to the amount of one hundred pounds or upwards, part of the estate of the Bankrupt, or shall neglect to invest any money in the purchase of Exchequer Bills *or in the public funds*,[1] when so directed as aforesaid, every such assignee shall [be][2] charged in his accounts with such sum as shall be equal to interest at the rate of twenty per cent. on all such money for the time during which he shall have so retained or employed the same, or permitted the same to be retained or employed as aforesaid, or during which he shall have so neglected to invest the same in the purchase of Exchequer Bills *or in the public funds*;[1] and the Commissioner is hereby required to charge every such assignee in his accounts accordingly.

See Offic. Assig. Rules, R. 20. 28, *post.*

6 Geo. 4, c. 16, § 104, Eng., *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic., c. 106, Eng., *re-enacted in substance* § 265 *of same, from* 11 *Oct.* 1849.

[1] *The words in italics are not in the corresponding section.*

[2] [be liable to be]

Taken from 49 Geo. 3, c. 121, § 4, U. K., *rep. as above.*

Assignee a Bankrupt—his Certificate.

CXXIII. And be it enacted, That if any assignee, indebted to the estate of which he is such assignee in respect of money [retained][1] or employed by him [for his own benefit],[2] become Bankrupt, if he shall obtain his certificate it shall only have the effect of freeing his person from arrest and imprisonment; but his future effects (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife, and children excepted,) shall remain liable for so much of his debts due to the estate of which he was assignee as shall not be paid by dividends under his Commission, together with lawful interest for the whole debt.

See 49 Geo. 3, as in margin.

Same Act, § 105, *re-enacted in substance*, § 156 *of same.*

[1] [so retained]

[2] [as aforesaid]

Taken from 49 Geo. 3, c. 121, § 6, U. K., *rep. by* 6 Geo. 4, *above.*

6 Wm. IV. Cap. 14.

Corresp. Enactments.

(The verbal differences are within brackets.)

Audit after Four Months.

CXXIV. And be it enacted, That the Commissioner shall at the [sitting][1] appointed for the last examination of the Bankrupt appoint a [sitting],[2] not sooner than four calendar months from the issuing of the Commission, nor later than six calendar months from the last examination of the Bankrupt, whereof, and of the purport whereof, he shall give twenty-one days notice in the [Dublin][3] Gazette, to audit the accounts of the assignees; and the assignees at such sitting shall deliver upon oath a true statement in writing of all monies received by them respectively, and when and on what account and how the same have been employed; and the Commissioner shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in hands of such assignees respectively, and shall inquire whether any sum appearing to be in their hands ought to be retained; and it shall be lawful for the said Commissioner to examine the said assignees upon oath touching the truth of such accounts; and in such accounts the said assignees shall be allowed to retain all such money as they shall have expended in suing out and prosecuting such Commission, and all other just allowances.

As to audits at all times, see 12 & 13 Vic. c. 107, s. 39, Ir., p. 118, *ante*. See 11 & 12 Geo. 3, c. 8, § 50, rep. hereby.

Same Act, § 106, Eng., *re-enacted in substance* § 185 *of same.*

[1] [meeting]

[2] [public meeting]

[3] [London]

Taken from 5 Geo. 2, c. 30, § 38, Eng., 49 Geo. 3, c. 121, § 5, U.K., *both rep. by* 6 Geo. 4, *above.*

The Dividend.

CXXV. And be it enacted, That the Commissioner[1] shall, not sooner than four nor later than twelve calendar months from the issuing the Commission, appoint a [sitting][2] (whereof, and of the purport whereof, he[1] shall give twenty-one days notice in the [Dublin][3] Gazette) to make a dividend of the Bankrupt's estate, at which [sitting][4] all Creditors who have not proved

Same Act, § 107, *re-enacted in substance* § 187 *of same.*

[1] *The word* "Commissioner," *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

[2] [public meeting]

[3] [London]

[4] [meeting]

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(*The verbal differences are within brackets.*)

[4] [meeting]

[5] [remaining in the hands of the assignees]

[6] [retained; and the assignees in pursuance of such order (and without any deed of distribution made for the purpose) shall forthwith make such dividend, and shall take receipts in a book to be kept for that purpose, from each creditor, for the dividend received by such creditor; and such order and receipt shall be a discharge to every such assignee for so much as he shall pay pursuant to such order;]

Taken from 5 Geo. 2, c. 30, § 33, Eng., 49 Geo. 3, c. 121, § 5, U. K., *rep. by* 6 Geo. 4, *above.*

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their debts shall be entitled to prove the same; and the said Commissioner at such [sitting][4] shall order such part of the nett produce of the Bankrupt's estate as he shall think fit to be forthwith divided amongst such Creditors as have proved debts under the Commission in proportion to their respective debts, and shall make an order for a dividend in writing under his hand, and shall cause one part of such order to be filed amongst the proceedings under the Commission, and shall deliver another part thereof to the assignees, which order shall contain an account of the time and place of making such order, of the amount of the debts proved, of the money [remaining][5] to be divided, of how much in the pound is then ordered to be paid to every Creditor, and of the money allowed by the Commissioner to be retained by the assignees, with his reasons for allowing the same to be so [retained;][6] and no dividend shall be declared unless the accounts of the assignees shall have been first so audited as aforesaid, and such statement delivered by them upon oath as aforesaid.

See 11 & 12 Geo. 3, c. 8, s. 50, Ir., rep. hereby. See last sec. and see Offic. Assig. Rules, *post passim.*

6 Geo. 4, c. 16, § 108, Eng. *comg.* 1 *Sept.* 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 184 *of same, from* 11 Oct. 1849.

[1] [London]

Creditors having Securities, no preference.

CXXVI. And be it enacted, That no Creditor having security for his debt, or having made any attachment in [Dublin][1] or any other place by virtue of any Custom there used, of the goods and chattels of the Bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution or extent served and levied by seizure upon, or any mortgage of or lien upon any part of the property of such Bankrupt before the Bankruptcy; provided that no Creditor, though for a valuable consideration, who shall sue out execution

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upon any judgment obtained by default, confession, or nil dicit, shall avail himself of such execution to the Prejudice of other fair Creditors, but shall be paid rateably with such Creditors.

It is not to be expected that the entire law regarding liens on land should be given in a sectional note in this work. Even in the present instance the subject is too extensive to be dealt with summarily. A short sketch, however, of the progress or rather succession of legislative measures upon that subject in Bankruptcy matters may be useful.

Distribution amongst creditors is the basis of the whole system of the Bankrupt law, and of course preference is at variance with that system. To suppress such preference became the object of the Legislature at different periods. The struggle, however, was, how to prevent undue preference without unsettling the claims of certain creditors supposed or assumed by the Legislature to be of such a meritorious or other character as to demand measures of protection. Accordingly the first Bankrupt Act in Ireland, 11 & 12 Geo. 3, c. 8, enacted (s. 4,) that no creditor of any "scrivener, salesmaster, banker, broker, factor, dealer in exchange or merchandize" within the description of that act, although for valuable consideration, who should "sue out execution upon any judgment obtained by default, confession or *nil dicit*," should avail himself of such execution to the prejudice of other fair creditors, but the person suing out the same should be "paid rateably only with other creditors." An exemption was then made (s. 5,) in favour of those who had obtained judgment *before* those persons, above mentioned, had become such traders. This was perfectly intelligible. The statute met so far those voluntary and suspicious preferences made whilst the party was trading and preserved the estate for future distribution in the event of a Commission of Bankruptcy.

Another exemption was made (s. 8,) in favour of debts whereof execution or extent was *served or executed* before the Bankruptcy. This gave an opportunity for a judgment creditor to sell the estate of a trader, often with the collusion of the trader himself, prior to any public development of insolvency. This latter clause had been a *verbatim* transcript of 21 Jac. 1, c. 19, s. 9, Eng. rep. by 6 Geo. 4, c. 16, Eng.

That enactment of Jac. 1, although repealed, was re-enacted in 6 Geo. 4, c. 16, s. 108, Eng., but with such alterations, intended no doubt to meet the evils of the Act of Jac. 1, as to render itself the subject of continual perplexities, and the present (s. 126), as may be seen above, is a verbatim copy thereof. It must be read, however, subject to, and in conjunction with, s. 95 of this Act, p. 257, *ante*, which renders valid all *bonâ fide* conveyances, contracts, and *other dealings* and transactions with a Bankrupt, and all executions and attachments *executed* or *levied* upon his real or personal property more than two months before the date and issuing of the Commission, notwithstanding a prior Act of Bankruptcy committed, *provided* no notice. This opened two questions; first, what is notice? Secondly, what is execution? With regard to the latter question, the most recent decision upon the subject in Ireland is *Assignee M'Dowell* v. *Cremmen*, had before Q. B. on appeal, 1849, where an attachment creditor having seized the

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(The verbal differences are within brackets.)

Taken from 21 Jac. 1, c. 19, § 9, Eng., *rep. by* 6 Geo. 4, *above.*

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(The verbal differences are within brackets.)

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goods, and a Commission having issued between seizure and sale, it was declared that seizure of the goods under the attachment did not amount to such an execution as the statute contemplated, thus confirming In re *Burke*, decided by Mr. Commissioner Macan, and reported in Mr. *Levy's* Hand-book of Bankruptcy, 1st Ed., p. 149. The report of *M'Dowell* v. *Crennan* has not been yet published in the Irish Law Reports, but it is believed will shortly appear. With respect to the two months clause, that portion of the above section was repealed by 7 & 8 Vic. c. 90, s. 36, Ir. (1844), and with respect to notice, it was enacted by s. 37, that all such transactions were valid whether with or without notice, if no Commission within twelve months. Upon the above section of 6 Geo. 4, Mr. Justice Pattison observed that it had given occasion to more litigation than any section in any Act of Parliament ever did, *Godson* v. *Sanctuary*, 2 B. & Ad. 255. And in *Taylor* v. *Taylor*, 5 B. & C. 392, Mr. Justice Holroyd said he entertained considerable doubts whether the question under that 108th section was determinable in a Court of Law. To obviate some of the inconveniences of this section the Act 2 & 3 Vic. c. 86, Ir., was passed, which restored in a measure the repealed provisions of 11 & 12 Geo. 3, by enacting that nothing in the (present) Act, 6 Wm. 4, c. 14, Ir., should "extend to any security by judgment obtained before the 1st of July, 1846, *and* before the Bankrupt became a trader liable to become a Bankrupt," and then it gave those debts so secured "the same force and effect, priority and preference" as if said Act of 6 Wm. 4, had not passed, adding, however, an exception conserving whatever proceedings had taken place upon the subject by any order or direction of the Commissioner.

Thus the law respecting judgment Creditors, as existing under 11 & 12 Geo. 3, Ir., was, at that time, restored.

After this followed 3 & 4 Vic. c. 105, Ir., whereby under s. 22, judgments were held to be charges upon lands, tenements and hereditaments. This let in the judgment Creditor so as to partake of one of the exemptions above, namely, as persons having *liens* upon the land, &c.

Thus then the judgment Creditor who had been levelled with the simple contract Creditor in the Bankrupt Court, under 6 W. 4, c. 14, was placed in priority before them. At the same time it was decided by Sir E. Sugden, that the 126th section above was not repealed by 3 & 4 Vic., c. 105, his Lordship drawing a distinction between judgments upon warrants and other judgments. That judgments were a general lien, but that judgments on warrants of attorney were not to have a preference in Bankruptcy—In re *Perrin*, 4, Ir. L. R., 369, and see also a learned decision of Mr. Com. Macan, in same, p. 89, *ibid.* It was also laid down that although judgments were specific liens, yet those specific liens could not operate to give judgment creditors any preference in Bankruptcy, unless entered up one year before; ibid. p. 369.

The last act upon the subject of judgments, is 12 & 13 Vic. c. 95, which so far as relates to the above named acts, restricted the operation 5 & 6 Wm. 4, c. 55, and of 3 & 4 Vic. c. 105, to judgments, where the sum due for principal and interest was over £150, thus excluding those comparatively small debtors from any of the exemptions and privileges hitherto bestowed; see s. 95 of this act, p. 257, and see 12 & 13 Vic., c. 107, s. 108, p. 178, *ante*, and note, and in *Taylor* v. *Taylor*, cited above, the Court of K. B. refused to set aside an execution issued upon a judgment of *nil dicit*, served and levied by seizure before Bankruptcy, holding that sec. 108 of Geo. 4 above did not render an execution void, but that it should not avail to prejudice other creditors. Act of Bankruptcy committed between seizure and sale, where judgment on *nil dicit*, see *Notley* v. *Buck*, 8 B. & C. 160, where it was held a Sheriff having notice ought not to have paid the money over to Pl. See *Cumming* v. *Welsford*, 6 Bing. 502, and the cases cited in note at foot of s. 108 of 12 & 13 Vic. c. 107, Ir., p. 178, *ante*.

(The verbal differences are within brackets.)

Final Dividend within Eighteen Months.

CXXVII. And be it enacted, That if the Bankrupt's estate shall not have been wholly divided upon the first dividend, the Commissioner[1] shall, within eighteen calendar months after the issuing of the Commission, appoint a [sitting][2] (whereof, and of the purport whereof, he[1] shall give twenty-one days notice in the [Dublin][3] Gazette) to make a second dividend of the Bankrupt's estate, when all Creditors who have not proved their debts may prove the same; and the Commissioner at such meeting, after taking such audit as herein-before directed, shall order the [balance][4] to be forthwith divided amongst such of the Creditors as shall have proved their debts; and such second dividend shall be final, unless any action at Law or suit in Equity be depending, or any part of the estate be standing out, not sold or disposed of, or unless some other estate or effects of the Bankrupt shall afterwards come to the assignees, in which case [the same shall be][5] as soon as may be [converted][6] into money, and within two calendar months after the same shall be so converted [divided][7] in manner aforesaid.

See s. 39 of preceding Act of Vic., p. 118, *ante*; see Rules of Official Assig. R. 34 to 38, *post*.

6 Geo. 4, c. 16, § 109, Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance*, § 188 *of same*, *from* 11 Oct. 1849.

[1] *The word* "Commissioner," *and all words relative to or governed by it are in the plural number throughout this corresponding section.*

[2] [public meeting]

[3] [London]

[4] [balance in the hands of the assignees]

[5] [they shall]

[6] [convert such estate and effects]

[7] [divide the same]

Taken from 5 Geo. 2, c. 30, § 37, Eng., *rep. by* 6 Geo. 4, *above*.

Assignees to File an Account of Unclaimed Dividends

Same Act, § 110.

CXXVIII. And be it enacted, That if any assignee under any Commission of Bankrupt shall have, either in his own hands or at any Bankers, or otherwise subject to his order or disposition, or to his knowledge in

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(The verbal differences are within brackets.)

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the hands or in the order and disposition of himself and any co-assignee or co-assignees, or of any or either of them, any unclaimed dividend or dividends amounting in the whole to the sum of fifty pounds, and shall not within six calendar months after this Act shall have taken effect, or two calendar months after the expiration of one year after the declaration and order for payment of such dividend or dividends made by the Commissioner, either pay to the Creditor or Creditors entitled thereto, or cause a certificate thereof to be filed in the office of the Lord Chancellor's secretary of Bankrupts, containing a full and true account of the name or names of the Creditor or Creditors to whom such unclaimed dividend or dividends is or are respectively due, and of the amount of such dividend or dividends respectively, (such account being signed by the assignee or assignees rendering the same, and attested by the solicitor to the Commission, or the solicitor to the assignee or assignees signing the same,) such assignee or assignees shall be charged in account with the estate of the Bankrupt interest upon such unclaimed dividend or dividends, to be computed from the time when such certificate is hereby directed to be filed, at the rate of [six][1] pounds per centum per annum, for such time as he shall thenceforth retain the same, and also such further sum as the Commissioner shall think fit, not exceeding in the whole twenty pounds per centum per annum; and the Lord Chancellor or the said Commissioner may order the investment of any unclaimed dividend or dividends in the public funds or in any government security for or on account of the Creditors entitled, and subject to such order as the Lord Chancellor may think fit to make respecting the same, who, if he shall think fit, may, after the same shall have remained unclaimed for the space of three years from the declaration of such dividends by the Commissioner, order

[1] [five]

the same to be divided amongst and paid to the other Creditors; and the proof of the Creditors to whom such dividends were allotted shall from thenceforth be considered as void as to the same, but renewable as to any future dividends, to place them pari passu with the other Creditors, but not to disturb any dividends which shall have been previously made.

See now Offic. Assig. Rules, R. 16. 20. 28, *post.*

Remedy for Dividends—Petition, not Action.

CXXIX. And be it enacted, That no action for any dividend shall be brought against the assignees by any Creditor who shall have proved under the Commission; but if the assignees shall refuse to pay any such dividend the Lord Chancellor may, on petition, order payment thereof, with interest for the time that it shall have been withheld, and the costs of the application.

See Offic. Assignees, their duty in Rules, *post.*

Bankrupt not surrendering and submitting—not discovering, or delivering up—removing, embezzling, &c. —Felony.

CXXX. And be it enacted, That if any person against whom any Commission has been issued or shall hereafter be issued, whereupon such person hath been or shall be declared Bankrupt, shall not, before three of the clock upon the forty-second day after notice thereof in writing to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the [Dublin][1] Gazette of issuing of the Commission and of the sittings of the Commissioner, surrender himself to him, and sign and subscribe such surrender, and submit to be examined before him from time to time upon oath, or being a Quaker *or Moravian or Separatist*[2] upon solemn affirmation *or declaration*,[2] or if any such Bankrupt upon such

(The verbal differences are within brackets.)

This was new in England.

It may be a question how far the above 5 & 6 Wm. 4, *be repealed by the Consol. Act*, 1849, Eng.

Same Act, § 111, *re-enacted in substance* § 190 *of same.*

Verbatim.

49 Geo. 3, c. 121, § 12, U. K., *rep. by* 6 Geo. 4, *above, as to England.*

Same Act, § 112, Eng., *comg.* 1 Sept. 1825; *altered by* 5 & 6 Vic. c. 122, § 32, Eng. *both rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance* § 251 *of same, from* 11 *Oct.* 1849.

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[1] [London]

[2] *The words in italics are not in the corresponding section.*

examination shall not discover all his real or personal estate, and how [or][3] to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto, (except such part as shall have been really and bona fide before sold or disposed *of*[2] in the way of his trade, or laid out in the ordinary expense of his family,) or if any such Bankrupt shall not upon such examination deliver up to the Commissioner all such part of such estate, and all books, papers, and writings, relating thereunto, as be in his possession, custody, or power, (except the necessary wearing apparel of himself, his wife and children, or if any such Bankrupt shall remove, conceal, or embezzle any part of such estate to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors, every such Bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term not less than seven years as the Court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour, in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.

But now see 12 & 13 Vic. c. 107, s. 44, Ir., p. 122, *ante*.

(The verbal differences are within brackets.)

[3] [and]

[2] *The words in italics are not in the corresponding section.*

Taken from 5 Geo. 2, c. 30, § 1, Eng., 1 Geo. 4, c. 115, § 1, Eng., *both rep. by* 6 Geo. 4, *above.*

Lord Chancellor may enlarge time.

CXXXI. And be it enacted, That the Lord Chancellor shall have power, as often as he shall think fit, from time to time to enlarge the time for the Bankrupt surrendering himself for such time as the Lord Chancellor shall think fit, so as every such order be made six days at least before the day on which such Bankrupt was to surrender himself.

The Commissioner now instead of the Ld. Ch., see p. 125, *ante*.

6 Geo. 4, c. 16, § 113, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

Verbatim.

Taken from 5 Geo. 2, c. 30, § 3, Eng., *rep. by* 6 Geo. 4, *above.*

6 WM. IV. CAP. 14.

CORRESP. ENACTMENTS.

(The verbal differences are within brackets).

Allowance for Maintenance.

CXXXII. And be it enacted, That it shall be lawful for the [Commissioner][1] before the choice of assignees, and after such choice for the assignees with the approbation of the [Commissioner][1] testified in writing under his hand, from time to time to make such allowance to the Bankrupt out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family.

This was new. But see now 12 & 13 Vic. p. 140.

Same Act, § 114, *re-enacted in substance* § 194 *of same, from* 11 *Oct.* 1849, *with alterations.*

[1] [Commissioners]

This was new in England.

Bankrupt apprehended by Warrant.

CXXXIII. And be it enacted, That if any Bankrupt apprehended by any warrant of the [Commissioner][1] shall, within the time hereby allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

See 11 & 12 Geo. 3, c. 8, s. 28, Ir., rep. hereby.

Same Act, § 115, *re-enacted* § 161 *of same.*

[1] [Commissioners]

Taken from 5 Geo. 2, c. 30, § 15, Eng., *rep. by* 6 Geo. 4, *above.*

Bankrupt to deliver up Books, &c., on oath—Allowance for attending on Assignees.

CXXXIV. And be it enacted, That the Bankrupt, after the *appointment or*[1] choice of assignees, shall (if thereto required) forthwith deliver up to them, upon oath sworn before a Master Ordinary or Extraordinary in Chancery, or justice of the peace, all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and every such Bankrupt not in prison or custody shall at all times after such surrender attend such assignees, upon every reasonable notice in writing for that purpose, given by them to him, or left at his house, and shall assist such assignees in making out the accounts of his estate; and

Same Act, § 116, *re-enacted in substance* § 105 *of same.*

[1] *The words in italics are not in the corresponding section.*

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(*The verbal differences are within brackets.*)

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such Bankrupt after he shall have surrendered may at all seasonable times before the expiration of the said forty-two days, or such further time as shall be allowed to him to finish his examination, inspect his books, papers, and writings in the presence of his assignees or any person appointed by them, and bring with him each time any two persons to assist him; and every such Bankrupt, after he shall have obtained his certificate, shall, upon demand in writing given to him or left at his usual place of abode, attend the assignees to settle any accounts between his estate and any debtor to or creditor thereof, or attend any Court of Record to give evidence touching the same, or do any act necessary for getting in the said estate, for which attendance he shall be paid five shillings per day out of his estate; and if such Bankrupt shall after such demand as aforesaid not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause shown to the Commissioner for such refusal, and by him allowed, the assignees making proof thereof upon oath before the Commissioner, the said Commissioner may, by warrant directed to such person as he shall think proper, cause such Bankrupt to be apprehended and committed to such prison as he shall think fit, there to remain until he shall conform to the satisfaction of the said Commissioner or of the Lord Chancellor.

Taken from 5 Geo. 2, c. 30, §§ 4, 5. 36, Eng., *rep. by* 6 Geo. 4, *above.*

See now 12 & 13 Vic. c. 107, s. 44, Ir., p. 122, *ante*, and as to destroying, falsifying books, see p. 126.

Bankrupt may be allowed to manage his own estate.

1 & 2 Wm. 4, c. 56, § 35, Eng., comg. 11 Jan. 1832, *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance* § 150 *of same, from* 11 Oct. 1849.

CXXXV. And be it enacted, That in every case the assignees may, with the [consent of the Commissioner, testified by some writings signed by him,][1] appoint the Bankrupt himself to superintend the management of the estate, or to carry on the trade, for [the benefit][2] of the Creditors, and in [all respects or any other][3] re-

[1] [approbation of the proper sub-division Court]

[2] [behoof]

[[3] all or any other]

spect as they may think fit to aid them in administering the Bankrupt's estate and effects, in such manner and on such terms as they may think best for the benefit of the persons interested in the estate.

This was new in Ireland.

Freedom from Arrest during Examination—Penalty for detaining him.

CXXXVI. And be it enacted, That the Bankrupt shall be free from arrest or imprisonment by any Creditor in coming to surrender, and after such surrender, during the said forty-two days, and such further time as shall be allowed him for finishing his examination, provided he was not in custody at the time of such surrender; and if such Bankrupt shall be arrested for debt or on any escape warrant in coming to surrender or shall after his surrender be so arrested within the time aforesaid, he shall, upon producing the summons under the [hand][1] of the [Commissioner][2] to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain such Bankrupt after he shall have shown such summons to him so signed as aforesaid, such officer shall forfeit to such Bankrupt for his own use the sum of five pounds for every day he shall detain such Bankrupt, to be recovered by action of debt in any Court of Record at [Dublin][3] in the name of such Bankrupt, with full costs of suit.

See 11 & 12 Geo. 3, c. 8 s. 25, Ir., rep. hereby.

Commissioner may adjourn sine die.

CXXXVII. And be it enacted, That it shall be lawful for the Commissioner[1] at the time appointed for the last examination of the Bankrupt, or any enlargement or adjournment thereof, to adjourn such examination

(*The verbal differences are within brackets.*)

This was new in England.

6 Geo. 4, c. 16, § 117, Eng.; *comg.* 1 Sep. 1825; *rep. by* 12 & 13 Vic, c. 106, Eng., *re-enacted in substance* §§ 112 & 113 *of same, from* 11 Oct. 1849.

[1] [hands]

[2] *The word* "Commissioner," *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

[3] [Westminster]

Taken from 5 Geo. 2, c. 30, § 5, Eng., *rep. by* 6 Geo. 4, *above.*

Same Act, § 118, Eng., *re-enacted in substance* § 162 *of same.*

[1] *The word* "Commissioner," *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

(The verbal differences are within brackets.)

sine die, and he shall be free from arrest or imprisonment for such time, not exceeding three calendar months, as the Commissioner shall, by indorsement upon such summons as aforesaid, appoint, with like penalty upon any officer detaining such Bankrupt after having been shown such summons.

This was new in England.

This was new in Ireland.

If Bankrupt in Custody, expense of removal how paid.

6Geo. 4, c. 16, § 119, Eng. comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *re-enacted in substance,* § 163 *of same, from* 11 Oct. 1849.

CXXXVIII. And be it enacted, That whenever any Bankrupt is in prison or in custody under any process, attachment, execution, commitment, or sentence, the Commissioner[1] may, by warrant under his hand, directed to the person in whose custody such Bankrupt is confined, cause such Bankrupt to be brought before him at any sitting, and if any such Bankrupt is desirous to surrender, he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the Commissioner for bringing up such Bankrupt; provided that the assignees may appoint any persons to attend such Bankrupt from time to time, and to produce to him his books, papers, and writings, in order to prepare an abstract of his accounts and a statement to show the particulars of his estate and effects, previous to his final examination and discovery thereof; a copy of which abstract and statement the said Bankrupt shall deliver to them ten days at least before his last examination.

Taken from 5 Geo. 2, c. 30, § 5, Eng., 49 Geo. 3, c. 121, § 13, U. K., *rep. by* 6 Geo. 4, *above.*

See 11 & 12 Geo. 3, c. 8, s. 26, Ir., rep. hereby.

Concealing Bankrupt's effects—Penalty £100, &c.

Same Act, § 120.

CXXXIX. And be it enacted, That any person wilfully concealing any real or personal estate of the Bankrupt, and who shall not within forty-two days after the issuing of the Commission discover such estate to [the Commissioner][1] or assignees, shall forfeit the sum of one hundred pounds and double the value of the estate so concealed; and any person who shall after the time allowed to the Bankrupt to surrender voluntarily discover to [the Commissioner][1] or assignees any part of such Bankrupt's estate not before come to the knowledge of the said assignees shall be allowed [six][2] per centum thereupon, and such further reward as the major part in value of the Creditors present at any meeting called for that purpose shall think fit, to be paid out of the estate recovered on such discovery.

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[1] *The word* "Commissioner," *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

See 11 & 12 Geo. 3, c. 8, ss. 35, 36, Ir., rep. hereby.

Bankrupt discharged by Certificate.

CXL. And be it enacted, That every Bankrupt who shall have duly surrendered and in all things conformed himself to the laws in force concerning Bankrupts at the time of issuing the Commission against him shall be discharged from all debts due by him when he became Bankrupt, and from all claims and demands hereby made proveable under the Commission, in case he shall obtain a certificate of such conformity so signed and allowed and subject to such provisions as herein-after directed; but no such certificate shall release or discharge any person who was partner with such Bankrupt at the time of his Bankruptcy, or who was then jointly bound or had made any joint contract with such Bankrupt.

See 11 & 12 Geo. 3, c. 8, ss. 40. 49, rep. hereby; and now see 12 & 13 Vic. c. 107, s. 54, Ir., p. 134, *ante*.

Certificate signed by Creditors.

CXLI. And be it enacted, That such certificate shall be signed by fourfi-fths in number and value of the Creditors of the Bankrupt who shall have proved debts under the Commission to the amount of twenty pounds or upwards, or after six calendar months from the last ex-

(The verbal differences are within brackets.)

The word "Commissioner" *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

[1] [one or more of the Commissioners]

[2] [five]

Taken from 5 Geo. 2, c. 30, §§ 20, 21, Eng., *rep. by* 6 Geo. 4, *above.*

Same Act, § 121, *re-enacted in substance* § 200 *of same.*

Verbatim.

Taken from 10 Anne c. 15, § 3, Eng., 5 Geo. 2, c. 30, § 7, Eng., 46 Geo. 3, c. 135, § 4, U. K., *all rep. by* 6 Geo. 4, *above.*

Same Act, § 122, Eng.

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(The verbal differences are within brackets.)

[1] *The word* "Commissioner," *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

This had been virtually rep. by 5 & 6 Vic. c. 122, § 39. Eng. *See* 12 & 13 Vic. c. 107, § 56, Ir., p. 136, *ante.*

Taken from 5 Geo. 2, c. 30, § 10, Eng., 49 Geo. 3, c. 121, § 18, U. K., *rep. by* 6 Geo. 4, *above.*

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amination of the Bankrupt, then either by three-fifths in number and value of such Creditors or by nine tenths in number of such Creditors, who shall thereby testify their consent to the said Bankrupt's discharge as aforesaid; and no such certificate shall be such discharge unless the Commissioner[1] shall, in writing, under his hand and seal, certify to the Lord Chancellor that such Bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery, and also that the Creditors have signed in manner hereby directed, and unless the Bankrupt make oath in writing that such certificate and consent were obtained without fraud, and unless such certificate shall after such oath be allowed by the Lord Chancellor, against which allowance any of the Creditors of the Bankrupt may be heard before the Lord Chancellor.

Virtually rep. by 12 & 13 Vic. c. 107, s. 56, p. 136, *ante*; see 11 & 12 Geo. 3, c. 8, s. 43, Ir.; rep. hereby.

6 Geo. 4, c. 16, § 124, Eng. *com.* 1 Sep. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

[1] *The word* "Commissioner," *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

After 5 & 6 Vic. c. 122, *this clause became unnecessary; see last corresponding section.*

Taken from 5 Geo. 2, c. 30, § 10, Eng., 24 Geo. 2, c. 57, § 10, Eng., *both rep. by* 6 Geo. 4, *above.*

Proof of Creditors' Signature.

CXLII. And be it enacted, That the Commissioner[1] shall not sign any certificate unless he shall have proof, by affidavit in writing, of the signature of the Creditors thereto, or of any person thereto authorized by any Creditor, and of the authority by which such person shall have so signed the same; and if any Creditor reside abroad the authority of such Creditor shall be attested by a notary public, British minister or consul; and every such affidavit, authority, and attestation shall be laid before the Lord Chancellor, with the certificate, previous to the allowance thereof.

Virtually rep., see last note.

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Securities to Creditors void.

CXLIII. And be it enacted, That any contract or security made or given by the Bankrupt or other person unto or in trust for any Creditor, or for securing the payment of any money due by such Bankrupt at his Bankruptcy, as a consideration or with intent to persuade such Creditor to consent to or sign such certificate, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable; and the party sued on such contract or security may plead the general issue, and give this Act and the special matter in evidence.

Altered to suit the circumstances, (Creditors no longer signing) 12 & 13 Vic., c. 107, s. 57, Ir., p. 188, *ante.*

Freedom from Arrest by Certificate.

CXLIV. And be it enacted, That any Bankrupt who shall, after his certificate shall have been allowed, be arrested or have any action brought against him for any debt, claim, or demand hereby made proveable under the Commission against such Bankrupt, shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became Bankrupt, and may give this Act and the special matter in evidence; and such Bankrupt's certificate and the allowance thereof shall be sufficient evidence of the trading, Bankruptcy, Commission, and other proceedings precedent to the obtaining such certificate; and if any such Bankrupt shall be taken in execution or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any Judge of the Court wherein judgment has been so obtained, on such Bankrupt's producing his certificate, to order any officer who shall have such Bankrupt in custody by virtue of such execution to discharge such Bankrupt without exacting

Corresp. Enactments.

(*The verbal differences are within brackets.*)

Same Act, § 125, *re-enacted in substance* § 202 *of same, from* 11 Oct. 1849.

Verbatim.

Taken from 5 Geo. 2, *c.* 30, § 11, Eng., *rep. by* 6 Geo. 4, *above.*

Same Act, § 126, *re-enacted in substance*, § 205 *of same, from* 11 *Oct.* 1849.

Verbatim.

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(The verbal differences are within brackets.)

Taken from §§ 7 & 13 of 5 Geo. 2, c. 30. *rep. by* 6 Geo. 4, *as above.*

any fee, and such officer shall be hereby indemnified for so doing.

(12 & 13 Geo. 3, c. 8, ss. 40. 46, Ir., rep.) See s. 59 of 12 & 13 Vic. p. 189, *ante.*

Where Bankrupt before, future estate liable unless Fifteen Shillings in the Pound paid.

6 Geo. 4, c. 16, § 127, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng.; *from* 11 Oct. 1849.

Verbatim.

Taken from § 9 of 5 Geo. 2, *as above.*

CXLV. And be it enacted, That if any person who shall have been so discharged by such certificate as aforesaid, or who shall have compounded with his Creditors, or who shall have been discharged by any Insolvent Act, shall be or become Bankrupt, and have obtained or shall hereafter obtain such certificate as aforesaid, unless his estate shall produce (after all charges) sufficient to pay every Creditor under the Commission fifteen shillings in the pound, such certificate shall only protect his person from arrest and imprisonment, but his future estate and effects (except the tools of trade and necessary household furniture, and the wearing apparel of himself, his wife and children,) shall vest in the assignees under the said Commission, who shall be entitled to seize the same in like manner as they might have seized property of which such Bankrupt was possessed at the issuing of the Commission.

(11 & 12 Geo. 3, c. 8, 42; 17 & 18 Geo. 3, c. 45, s. 11, both Ir., rep. hereby.

Allowance in proportion to Dividend.

Same Act, § 128, *re-enacted in substance,* § 195 *of same, from* 11 *Oct.* 1849.

Verbatim.

CXLVI. And be it enacted, That every Bankrupt who shall have obtained his certificate, if the nett produce of his estate shall pay the Creditors who have proved under the Commission ten shillings in the pound, shall be allowed five per cent. out of such produce, to be paid him by the assignees, provided such allowance shall not exceed four hundred pounds; and every such Bankrupt, if such produce shall pay such Creditors

(The verbal differences are within brackets.)

twelve shillings and sixpence in the pound, shall be allowed and paid as aforesaid seven pounds ten shillings per cent., provided such allowance shall not exceed five hundred pounds; and every such Bankrupt, if such produce shall pay such Creditors fifteen shillings in the pound or upward, shall be allowed and paid as aforesaid ten pounds per cent., provided such allowance shall not exceed six hundred pounds; but if such produce shall not pay such Creditors ten shillings in the pound such Bankrupt shall only be allowed and paid so much as the assignees and Commissioners shall think fit, not exceeding three pounds per cent. and three hundred pounds.

Taken from §§ 7 & 8 of 5 Geo. 2, *as above.*

11 & 12 Geo. 3, c. 8, ss. 40, 41, Ir., rep. See 12 & 13 Vic. c. 107, s. 61, Ir., p. 140, *ante.*

Allowance to one Partner in preference.

CXLVII. And be it enacted, That in all joint Commissions under which any partner shall have obtained his certificate, if a sufficient dividend shall have been paid upon the joint estate and upon the separate estate of such partner, he shall be entitled to his allowance, although his other partner or partners may not be entitled to any allowance.

Same Act, § 129, *re-enacted in substance*, § 196 *of same, from* 11 *Oct.* 1849.

Verbatim.

Taken from 3 Geo. 4, c. 81, § 12, Eng., *rep. by* 6 Geo. 4, *above.*

This was new in Ireland as well as England. See now 12 & 13 Vic., c. 107, s. 62, Ir., p. 142, *ante.*

No Certificate. Void Certificate. Gaming.

CXLVIII. And be it enacted, That no Bankrupt shall be entitled to his certificate or to be paid any such allowance, and that any certificate if obtained shall be void, if such Bankrupt shall have lost by any sort of gaming or wagering in any one day twenty pounds, or within one year next preceding his Bankruptcy two hundred pounds, or if he shall within one year next preceding his Bankruptcy have lost two hundred pounds by any contract for the purchase or

Same Act, § 130, *re-enacted in substance* § 201 *of same, from* 11 *Oct.* 1849.

Verbatim.

(The verbal differences are within brackets.)

sale of any government or other stock, where such contract was not to be performed within one week after the contract, or where the stock bought or sold was not actually transferred or delivered in pursuance of such contract, or shall, after an act of Bankruptcy committed, or in contemplation of Bankruptcy, have destroyed, altered, mutilated, falsified, or caused to be destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entries in any book of account or other document, with intent to defraud his Creditors, or shall have concealed property to the value of ten pounds or upwards, or if any person having proved a false debt under the Commission, such Bankrupt, being privy thereto or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

Taken from 5 Geo. 2, c. 30, § 12, Eng., 24 Geo. 2, c. 57, § 9, Eng., *both rep. by* 6 Geo. 4, *above.*

11 & 12 Geo. 3, c. 8, ss. 47, 48, Ir., rep. hereby.

Bankrupt not liable upon parol Promise.

6 Geo. 4, c. 16, § 131, Eng. *comg.* 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted, with amendments,* § 204 *of same, from* 11 *Oct.* 1849.

CXLIX. And be it enacted, That no Bankrupt after his certificate shall have been allowed under [any][1] Commission shall be liable to pay or satisfy any debt, claim, or demand from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement made or to be made after the suing out of the Commission, unless such promise, contract, or agreement be made in writing, signed by the Bankrupt, or by some person thereto lawfully authorized in writing by such Bankrupt.

This was new in England.

See this provision repeated in 12 & 13 Vic., c. 107, s. 69, Ir., p. 140, *ante.* Its re-enactment in s. 204 of the Eng. Consol. Act, 1849, further enlarges the Bankrupt's exemption, by omitting the qualifying proviso at conclusion: so that, now in England, no promise, written or otherwise, will bind the Bankrupt. The clause was not embodied in the 12 & 13 Vic., c. 107, Ir.; which is to be regretted, it being a humane and considerate intervention of the law between cupidity on the one hand, and terror on the other.

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[1] [any present or future]

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Corresp. Enactments.

(The verbal differences are within brackets.)

Bankrupt to receive surplus, if any.

CL. And be it enacted, That the assignees shall, upon request made to them by the Bankrupt, declare to him how they have disposed of his real and personal estate, and pay the surplus, if any, to such Bankrupt, his executors, administrators, or assigns; and every such Bankrupt, after the Creditors who have proved under the Commission shall have been paid, shall be entitled to recover the remainder of the debts due to him; but [such surplus shall not be paid][1] until all Creditors who have proved under the Commission shall have received interest [on the][2] debts to be calculated and paid at the rate and in the order following; (that is to say,) all Creditors whose debts are now by law entitled to carry interest, in the event of a surplus, shall first receive interest on such debts at the rate of interest reserved or by law payable thereon, to be calculated from the date of the Commission, and after such interest shall have been paid all other Creditors who have proved under the Commission shall receive interest on their debts, from the date of the Commission, at the rate of [five][3] pounds per centum.

The duty of keeping accounts as well as of possessing and receiving the estate, now rest chiefly with the Official Assignee, who must now, under Rules and Orders of 1849, deliver in his accounts *balanced*, &c., once in every four months to the Commissioners (R. 29), and cannot retain at any time more than a fixed sum under a severe penalty (R. 28).

Same Act, § 132, *re-enacted in substance* § 197 *of same, from* 11 *Oct.* 1849.

[1] [the assignees shall not pay such surplus]

[2] [upon their]

[3] [four]

The first clause taken from 18 Eliz., c. 7, § 4, Eng., *rep. by* 6 Geo. 4, *above. The latter clause new.*

Nine-tenths may accept Composition.

CLI. And be it enacted, That, at any meeting of Creditors after the Bankrupt shall have passed his last examination, (whereof and of the purport of which twenty-one days notice shall have been given in the [Dublin][1] Gazette,) if the Bankrupt or his friends shall make an offer of composition or security for such composition which nine-tenths in number and value of the

Same Act, § 133, *re-enacted in substance* § 230 *of same, from* 11 *Oct.* 1849.

[1] [London]

(The verbal differences are within brackets.)

Creditors assembled at such meeting shall agree to accept, another meeting for the purpose of deciding upon such offer shall be appointed, whereof such notice as aforesaid shall be given; and if at such second meeting nine-tenths in number and value of the Creditors then present shall also agree to accept such offer the Lord Chancellor shall and may, upon such acceptance being testified by them in writing, supersede the said Commission, *and the remaining one-tenth in number and value of the said Creditors shall be bound to accept of such composition so agreed to.*[2]

[2] *The words in italics are not in the corresponding section.*

This was new in England.

This was new in Ireland, and is now altered by s. 86 of 12 & 13 Vic. c. 107, Ir., which see p. 159, *ante.* Composition may now be ratified by three-fifths instead of nine-tenths, and at any time after the Bankrupt furnishes his schedule without waiting for final examination.

Voting upon Composition.

6 Geo. 4, c. 16, § 134, Eng.; *comg.* 1 *Sep.* 1825; *rep. by* 12 & 13 Vic, c. 106, Eng., *re-enacted in substance* § 28 *of same, from* 11 *Oct.* 1849.

CLII. And be it enacted, That in deciding upon such offer as aforesaid any Creditor whose debt is below twenty pounds shall not be reckoned in number, but the debt due to such Creditor shall be computed in value; and that any Creditor to the amount of fifty pounds and upwards residing out of [Ireland][1] shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat; and such Creditor shall be entitled to vote by letter of attorney executed and attested in manner hereby required for such Creditor's voting in the choice of assignees; and if any Creditor shall agree to accept any gratuity or higher composition for assenting to such offer he shall forfeit the debt due to him, together with such gratuity or composition; and the Bankrupt shall (if thereto required) make oath before the [Commissioner][2] that there has been no such transaction be-

[1] [England]

[2] [Commissioners]

tween him or any person, with his privity, and any of the Creditors, and that he has not used any undue means or influence with any of them to attain such assent as aforesaid.

This was new in Ireland; but now by s. 87 of 12 & 13 Vic. c. 107, Ir., personal service on the £50 Creditor as above is omitted, see p. 160, *ante*, and by s. 88 of same £100 Creditors must be served with a *copy* of the notice of each meeting, see p. 161. See 19 & 20 Geo. 3, c. 25, s. 6, Ir., rep.

Agents to Commissions—their Oath.

CLIII. "And whereas great inconveniences have arisen from the agents or clerks [to][1] Commissions of Bankrupts being considered as officers belonging to the assignees appointed under [such][2] Commissions, and not subject to the control or direction of the Commissioners named in such Commissions, and they have frequently refused [to produce][3] the proceedings under such Commissions to the Commissioners, and in many instances have refused to obey their orders;" be it enacted by the authority aforesaid, That every [person][4] who shall act as agent or clerk to or who shall take out any Commission of Bankruptcy shall [be subject to][5] the control and directions of the Commissioner [to be appointed by virtue of this Act, and shall before he shall act or be capable of acting as such agent or clerk][6] take the oath following:

"*I* A. B. do swear, That during such time as I shall be employed as agent or clerk to the Commission, or in anywise concerning the proceedings in a Commission of Bankrupt issued and awarded and now in prosecution against C. D., I will faithfully and honestly, according to the best of my skill and knowledge, write, take down, and transcribe all such depositions and evidences, as well of the said Bankrupt as of all others who shall be sworn and examined by or before the [Commissioner][7] under and by virtue of the said Commission, as I shall

(The verbal differences are within brackets.)

This was new in England, and was taken from the Scotch Sequestration Act, 54 Geo. 3, c. 137, §§ 59, 60, 61. See 2 Roll's. Com. 484.

19 & 20 Geo. 3, c. 25, § 6, Ir., comg., 12 June 1780, *rep. by* 6 Wm. 4, *herein.*

[1] [to different]

[2] [the said several]

[3] [producing]

[4] [person or persons]

[5] [be considered as secretary or clerk to the said Commissioners, and under]

[6] [and be obliged to]

[7] [Commissioners]

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by the said [Commissioner][7] in the said Commission [named][8] be directed to write, take down, or transcribe; and also that I will in like manner during such time safely and faithfully preserve and keep from all kind of defalcation and embezzlement all such depositions, evidences, and proceedings while the same shall be by the said [Commissioner][7] committed to my care; and that I will not knowingly [suppress or conceal the truth, or suggest or practise any][9] falsehood, in respect to any matter or thing [relating to the said Commission or to the proceedings thereunder; and that I will, when required by such Commissioner, deliver up to him, or to such person as he shall appoint, the several depositions and the proceedings and documents in my custody or power relating to the said Commission.][10] So help me GOD."

Messenger not to act as Agent.—Oath of Office.

CLIV. And be it enacted by the authority aforesaid, That any person or persons acting as messenger or messengers, and who shall issue any Commission of Bankruptcy, or when issued out shall act as agent in such Commission, shall from such time be considered incapable for ever after of holding the office of messenger *in any Commission of Bankrupt;*[1] and every messenger shall, before the Commissioner[2] executes his warrant of seizure to him, take before [the Commissioner][3] the following oath; (that is to say,)

"*I* A. B. do swear, That I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several orders which I shall receive from the [Commissioner][4] in [the][5] Commission of Bankrupt awarded and issued against C. D.; and that I will not knowingly [suppress or conceal the truth, or suggest or practise][6] any falsehood, in respect

Corresp. Enactments.

(*The verbal differences are within brackets.*)

[7] [Commissioners]

[8] [named, or the majority of them]

[9] [use, or permit to be used, any fraud, deceit, or imposition in suppressing or concealing the truth or suggesting of a]

[10] [which may in anywise tend to or prevent the due and effectual execution of the several powers and trusts by law reposed in said Commissioners]

19 & 20 Geo. 3, c. 25, § 6, Ir., comg., 12 June, 1780, *rep. by* 6 Wm. 4, *herein.*

[1] *The words in italics are not in the corresponding section.*

[2] *The word* "Commissioner" *and all words governed by or relative to it, are in the plural number throughout this corresponding section.*

[3] [them]

[4] [Commissioners or the major part of them]

[5] [this said]

[6] [use, or permit to be used, any fraud, deceit or imposition in suppressing or concealing the truth, or suggesting]

(The verbal differences are within brackets).

to any matter or thing [relating to the said Commission or any of the proceedings thereunder; and][7] that I will not by myself, or any other person in trust for me, have any interest, employment, or concern in the said Commission in any other capacity whatsoever except that of messenger. So help me GOD."

[7] [which may in any-wise tend to prevent the due and effectual execution of the several covenants and trusts by law reposed in the said Commissioners, or]

Evidence may be on Oath or Affidavit.

CLV. And be it enacted, That [the][1] Commissioner[2] to be appointed by virtue of this Act shall in all matters within his[2] jurisdiction have power to take the whole or any part of the evidence, either viva voce on oath, or upon affidavits to be sworn before [the said][1] Commissioner or a master ordinary or extraordinary in Chancery, as the said Commissioner may in any case direct, or as the Lord Chancellor may from time to time prescribe by any general rule to be made by virtue of this Act.

1 & 2 Wm. 4, c. 56, § 38, Eng., comg., 20 Oct. 1831, *rep. by* 12 & 13 Vic. c. 106, Eng., *re-enacted in substance,* § 245 *of same, from* 11 Oct. 1849.

[1] [the said Judges and the]

[2] *The word* "Commissioner," *and all words relative to or governed by it, are in the plural number throughout this corresponding section.*

This was new in England.

But now all affidavits "to be made or used in matters of Bankruptcy, or under or by virtue of any statute relating to Bankrupts shall and may be sworn before" a Commissioner, Registrar, Master Ordinary (or his examiner), or a Master Extraordinary (or in England or Scotland before a Commissioner appointed for taking affidavits) or before a Magistrate, within his jurisdiction, or *elsewhere* before a Magistrate attested by a notary, or before a British Minister, Consul or Vice-consul. See 12 & 13 Vic. c. 107, s. 69, Ir., p. 146, *ante.*

Concerted Bankruptcies.

CLVI. And be it enacted, That from and after this Act shall take effect no Commission of Bankrupt shall be superseded [by][1] reason only that the Commission [has][2] been concerted by and between the petitioning Creditor, his solicitor or agent, or any of them, and the Bankrupt, his solicitor or agent, or any of them, save and except where any petition to supersede a Commission for any such cause shall have [been][3] presented

1 & 2 Wm. 4, c. 56, § 42, Eng., comg. 20 Oct. 1831, *rep. by* 12 & 13 Vic., c. 106, Eng., *re-enacted* § 115 *of same, from* 11 Oct. 1849.

[1] [nor any fiat annulled, nor any adjudication reversed by]

[2] [fiat or adjudication has]

[3] [been already]

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(*The verbal differences are within brackets.*)

[4] [and shall be now]

This was new in England.

[before this Act shall come into operation, and shall be then][4] pending.

This was new in Ireland. By s. 36 of this Act no Commission was invalid by reason of an act of Bankruptcy prior to the petitioning creditor's debt, and now by 12 & 13 Vic. c. 107, s. 8, no Commission is disturbed by reason of an act of Bankruptcy either prior or subsequent to such debt, provided the Commission issue within a year of the act of Bankruptcy committed, see p. 89, *ante*,

1 & 2 Wm. 4, c. 56, § 58, Eng., comg. 20 Oct. 1831, *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

[1] [any Judge, Commissioner, Registrar, deputy-registrar, clerk, messenger, assignee or any other officer or person whatsoever]

[2] [Acts relating to Bankrupts, or under colour of doing any thing under this Act, or any other such Acts]

[3] [and]

[4] *The words in italics are not in the corresponding section.*

Penalty for taking Fees.

CLVII. And be it enacted, That if [any person employed for any of the purposes of this Act][1] shall for any thing done or pretended to be done under this Act, or any other Act relating to Bankrupts, or under colour of doing any thing under this Act or any other [such Acts,][1] fraudulently [or][3] wilfully demand or take, or appoint or allow any person whatsoever to take for him or on his account, or for or on account of any person by him named, or in trust for him or for any other person by him named, any fee, emolument, gratuity, sum of money, or any thing of value whatsoever, other than is allowed by this Act and any other such Act as aforesaid, *or by any order of the Lord Chancellor acting under the authority of this Act or any other such Act as aforesaid,*[4] such person when duly convicted thereof shall forfeit and pay the sum of five hundred pounds, and be rendered incapable and is hereby rendered incapable of holding any office or place whatsoever under his majesty, his heirs or successors.

And now see 1 Vic. c. 48, § 11, Ir.

No corresponding section.

See a provision in 1 & 2 Geo. 4, c. 115, § 21, Eng.,

Committal for interruption.

CLVIII. And be it enacted, That any Commissioner appointed under this Act shall have full power and he is hereby authorised to commit to custody in any prison or bridewell, for any term not exceeding one month, any person who shall be guilty of any riot or disturbance in any Court held by such Commission, or who shall in such Court interrupt the said Commissioner in the exercise of his duty.

The interruption in the sense, caused by the (supposed accidental) insertion of this section between ss. 157 and 159, rendered the application of the words "such offender" in s. 159 ambiguous. The ambiguity has been removed and the sense restored by a subsequent enactment, 1 Vic. c. 48, s. 11, Ir. The disposal of the person offending under the present section has also been rendered less indefinite by s. 12 of same, which see, *post.*

Offences.

CLIX. And be it enacted, That any such offender may be prosecuted either by information at the suit of his Majesty's Attorney General, or by criminal information before his Majesty's Court of King's Bench, or by indictment: Provided always nevertheless, that if [any person so employed as aforesaid][1] shall commit any offence against this Act, it shall and may be lawful for [the][1] Lord Chancellor to dismiss the person so offending [from his employment upon proof made before him of such offence having been committed.][3]

See note to preceding section.

Construction Clause.

CLX. And be it enacted, That this Act shall be construed beneficially for Creditors; and that nothing herein contained shall alter the present practice in Bankruptcy, except where any such alteration is expressly declared; and that it shall extend to aliens, denizens, and women, both to make them subject thereto and to entitle them to all the benefits given thereby; and that all powers hereby given to or duties directed to be performed by the Lord Chancellor shall and may be exercised or performed by a Lord Keeper or by Lords Commissioners of the Great Seal; and all powers given to or duties directed to be performed by [the][1] assignees

(The verbal differences are within brackets.)

(quere repealed, 1849) *empowering the Commissioner to authorize messenger to take into custody disturbers of Court, in order to bring same up before a Magistrate, there to be* "dealt with according to law."

1 & 2 W. 4, *as in preceding page,* s. 59.

[1] [any registrar, deputy registrar, clerk, messenger, or assignee]

[2] [the Court of Review, or the]

[3] [upon proof made before him or them of such offence having been committed, upon a rule to shew cause: Provided further, that if such Court, upon cause being shewn, shall think fit to direct an issue to be tried touching the matter of the said charge, such issue may be tried before the said chief Judge or one of the other judges of the said Court of Review.]

6 Geo. 4, c. 16, § 135, Eng., comg. 1 Sept. 1825; *rep. by* 12 & 13 Vic. c. 106, Eng., *from* 11 Oct. 1849.

[1] [the Commissioners or]

CORRESP. ENACTMENTS.

6 WM. IV. CAP. 14.

may be exercised and shall be performed [by the major part of them,][2] or by one assignee where only one shall have been [appointed or chosen.]

Commencement of Act.

CLXI. And be it enacted, That this Act shall commence and take effect from and after the first day of July one thousand eight hundred and thirty-six; and it shall not extend either to England or Scotland, except where the same are expressly mentioned.

May be Altered, &c.

CLXII. And be it enacted, That this Act may be repealed, altered, or amended during this present session of Parliament.

* * *

(*The verbal differences are within brackets.*

[2] [respectively by the major part of the Commissioners]

[3] [chosen]

STATUTES RELATING
TO
BANKRUPTCY IN IRELAND.

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21 & 22 GEO. III., CAP. 46.

An Act to promote Trade and Manufactures, by regulating and encouraging Partnerships.

WHEREAS, the encreasing the stock of money employed in trade and manufacture, must greatly promote the trade and prosperity of this kingdom, and many persons might be induced to subscribe sums of money to men well qualified for trade, but not of competent fortune to carry it on largely, if they were allowed to abide by the profit or loss of trade for the same, and were not to be deemed traders on that account, or subject thereby to any further or other demands, than the sums so subscribed: be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, That any number of persons may from and after the twenty-fourth day of June, one thousand seven hundred and eighty-two, by deed or instrument of partnership under their hands and seals, executed in the presence of two or more subscribing witnesses, and to be registered as hereinafter mentioned, enter into a joint trade or co-partnership, for the purpose of buying and selling in the gross, or by wholesale, or for establishing or carrying on any manufacture or business, for any term not exceeding fourteen years, but determinable at any shorter period, in such manner and upon such conditions as shall be agreed upon by such partnership deed, and that the said co-partners, or some of them, so executing the said deed, shall thereby bind themselves to pay in money towards a joint stock, such sums as they shall respectively think fit, such joint stock, however, not to be in any one of such companies or co-partnerships, less in the whole than one thousand pounds, or more than fifty thousand pounds.

Any number of persons may join in partnership by deed, for 14 years or any shorter period.

having a joint stock of not less than £1,000 or more than £50,000.

II.—And be it further enacted, by the authority aforesaid, that the said subscribers or co-partners may, by such partnership deed, nominate and appoint from amongst themselves one or more person or persons to manage, conduct, or carry on said trade, business, or manufacture, in whose name and names, whilst living and continuing in credit with the addition of "and company," the business of said partnership shall be transacted and carried on, and such person or persons, so nominated and appointed, shall be called the acting partner or partners of the said co-partnership or company, and such acting partner or partners, and his or their person or persons, lands, goods, and chattels, shall, to all intents and purposes, be as subject to the laws against bankrupts, for and on account of the said partnership debts, as if such acting partner or partners had traded upon his or their own account, and without any connection in trade with the said other partners or subscribers.

Subscribers may nominate acting persons, in whose names, with the addition of, "and company," the business to be carried on.

acting partners subject to bankrupt laws.

III.—And be it further enacted, by the authority aforesaid, that the remaining subscribers or co-partners, who shall not have the actual management or conduct of said trade, business, or manufacture, and whose name

Remaining partners, called anonymous partners, and partnership, not liable to their debts, &c.

nor they to debts or contracts of acting partners, save as herein.

shall not be mentioned in the firm of said company, shall be styled anonymous partners of said company, and no debts or engagements of such anonymous partners, or any of them, on what ground soever contracted, shall charge or affect the other partners, or the said partnership stock, as debts due by the said partnership or company, nor shall such anonymous partners, or any of them, be subject to any contracts or engagements of such acting partner or partners, or to any loss or miscarriage which may happen in the said partnership business, further or otherwise than as hereinafter mentioned.

Anonymous partners at time of executing partnership shall pay one-fourth of sum subscribed, and in twelve months or at times limited in said deed, remaining three-fourths in cash, and without demand, to acting partners.

and on failure of paying said three-fourths, as aforesaid, the person so failing shall forfeit first one-fourth paid, and all profit arising therefrom, and no longer considered a partner.

and remaining three-fourth liable to debts of said partnership, in case of failure of said partnership, but if such partnership sufficient to pay each his full subscription and interest, said one-fourth forfeited to be repaid.

IV.—And be it further enacted, by the authority aforesaid, that each subscriber or co-partner, called or styled as before anonymous partner, shall, at the time of his execution of the articles or deed of co-partnership, actually pay to said acting partner or partners of said company, towards the further capital stock thereof, a sum not less than one-fourth part of the sum by him subscribed and mentioned on the said articles of partnership as his proportion, and shall pay or tender in cash the remaining three fourths of the sum so subscribed by him to such acting partner or partners, if living, and without any demand, at the end of twelve calendar months after the execution of the said partnership deed at furthest, or at such days and times within the said twelve months, and in such proportions as for that purpose shall be limited by the said partnership deed or agreement, and that, too, without any demand by the said acting partner, or partners; and in case any of the said anonymous co-partners, his executors or administrators, shall neglect, or refuse to pay or tender to the said acting partner or partners, the said three fourths at the times and in manner aforesaid, he shall absolutely forfeit for the benefit of the said other partners and the partnership creditors, the said one fourth so paid by him, and all profits of the said trade arising during the said partnership, from the said one fourth of his said subscription, so paid or deposited as aforesaid by him, and shall no longer be deemed or considered as one of the said co-partners; and moreover, in case of a failure of the said partnership business, he, his heirs, executors and administrators, shall be subject to pay the said partnership creditors, any sum or sums of money which may be wanted to satisfy their demands, not exceeding the said three fourths of the sum so by him originally subscribed or agreed to be paid; but if, at the end, or other dissolution of the said partnership, the said trade shall have turned out so beneficial, that each of the said partners shall have received his principal money, with interest, from the time or times of payment thereof, then and in such case the one fourth so paid by such forfeiting partner shall, by the acting partner or partners, his executors or administrators, be refunded and repaid to the said forfeiting partner or partners, his executors, administrators, or assigns, but without any interest or profits.

A full account to be made once a year, and a balance struck and signed by acting partners, and two-thirds of anonymous, at least.

V.—And be it further enacted, by the authority aforesaid, that a full account or rest in writing shall be made once in every year, or oftener, of all the goods, wares, and merchandizes, bonds, bills, and notes, debts, monies, and other effects, of, or belonging to said co-partnership, and of all debts owing by them, and a fair balance struck off the whole, and of each particular partner's share, and signed by the acting partner or partners, and at least two thirds of the said anonymous partners, or their respective attorneys for that purpose lawfully constituted, with the approbation of the said partners.

And each partner may take out at such settlement one-half of his share of such profits as may have arisen, the other half to joint-stock during co-partnership.

VI.—And be it further enacted, by the authority aforesaid, that each of the said anonymous partners, his executors or administrators, shall, and may receive, and take out of said partnership, after a just and fair settlement of accounts as above mentioned, and not before half and no more of his, or their share, or proportion of the net profits made by said company, on the sums paid in by them severally and respectively, and the residue of the profits, and any sum or sums of money paid by a forfeiting partner or partners as aforesaid, and the profits thereof shall go towards increase of said capital or joint stock, until the expiration of the term of their co-partnership.

Anonymous partners, paying sub-

VII.—And be it further enacted, by the authority aforesaid, that such anonymous partner or partners, having really and *bonâ fide* paid or tendered the full sum in cash, by him subscribed and specified in such partnership deed at such times, as herein before mentioned, and who shall not act contrary to the true intent and meaning of this Act in any of the instances hereinafter expressed, shall not be subject to any of the laws against bankrupts, or to any greater loss charges or damages, for or on account of his or their having entered into such partnership, than the full sum or sums so by him or them subscribed and paid, and such proportion of the profits thereof, as is hereinbefore directed to be held over to the end of the said partnership at the utmost, or such proportion of such full sum so subscribed, and the profits thereof not received as may be necessary to make full payment and discharge of all the said partnership debts and engagements and that in case a failure shall happen in such partnership business, or it shall be dissolved by the death of an acting partner, or on the terms of such partnership deed before the time or times shall have come for the payment of the three fourths of the said subscriptions, that then, and in such case, each and every of such anonymous partners conforming to this Act, his or their heirs, executors or administrators, shall be bound only to pay such remaining three fourths or such part thereof, or so much as may be necessary with interest, from the time or times limited by the said partnership deed for the payment thereof, towards the satisfaction or discharge of the said partnership debts, and shall not be subject to any further loss or damage whatsoever.

scriptions, and complying as herein, not subject to bankrupt laws, nor liable to said partnership debts for more than his subscription and profits received thereon.

and in case of failure or dissolution of said partnership before time of paying said three-fourths, such anonymous partners, their executors, &c., liable only for said three-fourths, or so much as will pay debts.

VIII.—And be it further enacted, by the authority aforesaid, that no partnership to be formed pursuant to this Act, shall be dissolved by the death or bankruptcy of all or any of the said anonymous partners, during the term of the said partnership, unless it be otherwise agreed by the said partnership deed, and the legal personal representative or representatives of such anonymous partner so dying, and the assignees of such failing anonymous partner, or such person or persons who shall on a public auction buy, and become assignee or assignees of the share and interest in the said partnership of such deceased or failing anonymous partner shall stand in the place of such deceased or failing partner during the term of the said partnership, and be an anonymous partner or partners upon payment of such part of the said deceased or failing partner's subscription if any shall not have been paid, and in default of payment thereof, whether for want of assets or representation or otherwise, the sums before paid though exceeding one fourth part of the sum subscribed by such deceased or failing partner or partners, and the profits thereof are to be forfeited in such manner as hereinbefore mentioned, as to the *the one fourth of the said subscription, and where there are two or more acting partners, the deaths or bankruptcy of any of them during the term of the said partnership, whilst one shall survive in full credit, and not a bankrupt shall not dissolve the said partnership unless it shall be otherwise agreed by the said articles of partnership.

Partnership not dissolved by death or bankruptcy of partners, except by deed, and the share to go to assignees, &c.

death, &c. of one, whilst one alive and in credit, shall not dissolve.

*Sic.

IX.—Provided always and be it enacted by the authority aforesaid, that in all cases where there shall be one acting partner in full credit, and not a bankrupt, such partnership shall be deemed to exist during the time for years by such partnership deed destined for its continuance, notwithstanding that by events specified in such partnership deed it may be dissolved or dissolvable before the effluxion of such term for years unless the dissolution of such partnership shall have been twice advertized in the Dublin Gazette, and an entry made in the register's books opposite to or immediately under the entry of the registry of such partnership, importing the dissolution of such partnership, and subscribed by some one or more of the said partners and truly dated, and for which said last mentioned entry the register shall be entitled to receive five shillings.

Partnership existing where one acting partner in full credit,

unless dissolution advertised in the Dublin Gazette. and entered in Register's book. fee to Registers, 5s.

X.—And be it further enacted by the authority aforesaid, that none of the said original partners nor the purchaser or purchasers of the share or shares of a deceased or failing partner shall have liberty during the term of said partnership, to sell or dispose of his or her share in such partnership dealing, so as to obtrude another person as partner in the said company, unless upon such terms, and with such consents as shall be specified in the said partnership deed, or with the consent of all the other partners, and

Sales to be under terms of deed, or consent of all.

After transfer lia

ble to subscription, if not paid.

even, after such transfer, the original partner, unless he shall have previously paid, or deposited with the acting partner or partners his full subscription as aforesaid, shall stand bound by this Act in such manner as if such transfer had not been made until the partner accepted in his stead shall have fulfilled his engagement.

How partnership to sue and be sued.

How on death, &c., of sole, original partners.

How, where more than one acting partner.

How, in case of bankruptcy of all.

no injunction granted against said partnership for want of answer of anonymous.

XI.—And be it further enacted by the authority aforesaid, that each and every of the said companies or co-partnerships may as well after as before the determination of the said partnership, sue and be sued, during the life of the original acting partner, if there shall be but one such original acting partner, or during the lives of the original acting partners, if there shall be two or more of them, and whilst such original acting partner or partners shall remain in credit and not a bankrupt or bankrupts by the firm stile and title to be assumed by them pursuant to this Act and in case of the death or bankruptcy of a sole original acting partner, then in the name of the personal representative or assignees of such sole original acting partner, and where there shall be two or more original acting partners, then in case of the death or deaths or bankruptcy of one or more of the said original acting partners, then in the names or name of the survivors or survivor, others or other of the said original acting partners not being a bankrupt or bankrupts, and in the name or names of the legal personal representative of such survivor or other of such two or more original acting partners, but if such acting partners in case of two or more of them or such acting partner if there shall be but one shall all become bankrupts or bankrupt, then such suits shall be carried on for and against such partnership or company, in the names of the assignees of such of the said acting partners as last became bankrupt; and in case any bill shall be filed in a Court of Equity against any such partnership or company by the firm aforesaid, it shall not be necessary to make all or any of the said anonymous partners parties thereto; and no injunction shall issue without special cause for want of the answer of such anonymous partners or any of them, if the acting partner or partners shall have answered such bill, or obtained time so to do without an injunction.

Proceedings not to be in name of assignees, unless previous indemnity.

XII.—Provided always, that in case the assignee or assignees of any such acting partner or partners shall not consider himself or themselves as interested in the event of any such suit or suits so to be prosecuted or defended as aforesaid; that then, and in such case, the name or names of such assignee or assignees shall not be made use of by the other partner or partners or their representatives, without a previous and sufficient indemnity given or tendered to such assignee or assignees against all costs, charges, and damages, which shall or may attend the prosecution or defence of such suit or suits.

No partnership considered as under this act, unless deed or memorial registered, and how.

Register to keep separate books, &c.

his certificate evidence.

Memorial of partnership-deed to contain date, name and addi-

XIII.—Provided always and be it further enacted, by the authority aforesaid, that no partnership shall be considered as formed or established under the sanction of this Act, unless every such partnership deed or memorial thereof shall, before the commencement of such partnership, or within ten days, at the most, after the commencement thereof, be registered in the public registry office Dublin, for registering deeds pursuant to the statutes in that case made and provided, and in such manner as thereby and herein directed or required, for which registry such fees shall be paid as such register is now, by the law, entitled to receive for other deeds registered in the said office, and in consideration thereof, such register shall keep separate and distinct books for the registry of such partnership deeds or articles, and separate and distinct alphabets, and in all other respects do and perform what is by law incumbent upon him to do and perform, with respect to the registry of the deeds of lands, and his certificate shall be evidence as in case of other registered deeds; and every memorial of such partnership deed shall contain the day and year when such deeds bear date, and the names and additions of all the parties thereto, distinguishing which of them are the acting parties, and which of them anonymous, and the sums by them respectively subscribed and agreed to be paid, to make up a stock for the said company, and the time from which such partnership is to commence, the term for which it is to continue; and every such memorial shall be under the hand and seal, or hands and seals, of the acting partner or of all acting partners, if there shall be two or more of them, and attested by two witnesses, one whereof shall be witness to the execution of such deed, who shall, by affidavit to be made before the said register, or his deputy, proving the signing and sealing of the said memorial, and the execution of the said deed, by all the parties thereto, or their lawful attornies, and the payment in cash, or good bank notes, of the said one fourth of the said subscription money, to such acting partner or partners, by each of the said other partners, who shall subscribe to the said stock, and also the day and time of the delivery of such memorial to the register or his deputy.

tion, &c., under hand and seal, &c., attested by two witnesses.

XIV.—And be it further enacted, by the authority aforesaid, that all contracts, debts and engagements, subsisting at the time of the execution of the said partnership deed between the said anonymous partners, or any of them and the said acting partner or partners, or any of them, or as bail or security for each other respectively, which shall not be fully disclosed and made known, at or before the execution of the said partnership deed, to all the said partners, testified either by the said partnership deed, or some other writing, signed by all the said partners, and attested by two or more credible witnesses; and also every kind of dealing whatsoever, in the way of buying, selling, factorage, exchange, discount, loan of money, or otherwise, between the said anonymous partners, or any of them, or any person or persons in trust for them, or any of them and the said acting partner or partners, or any of them or any person or persons in trust for them, or any of them, after the execution of the said partnership deed, which shall not be allowed and approved by a majority of the said partners, by instruments under the hands, and be attested as aforesaid, shall be utterly void to all intents and purposes, as between such acting partner and partners, and such anonymous partner and partners.

All debts, &c, between acting and anonymous partners prior to deed, not disclosed, void.

XV.—Provided always, and be it further enacted, by the authority aforesaid, that if any dealings and transactions whatsoever from and after the execution of the said partnership deed between the said anonymous partners or any of them, and the said acting partner or partners or any of them shall by a majority of the said partners or company, be permitted and allowed as aforesaid that every debt and engagement of every such anonymous partner or partners in consequence of such dealings, shall be paid and performed to such acting partner or partners at such times and in such manner as the same ought to be paid and performed by any other debtor to the said company, and with the like remedies for the recovery thereof, and without any colour or pretence of equity whatsoever to withhold or postpone the payment of the same for or on account of such anonymous partner or partners' share or interest in the said capital, stock, or the profits thereof.

How far transactions after deed between anonymous, or between anonymous and acting, valid.

XVI.—Provided always, that if any anonymous partner or any person who by transfer shall or may as aforesaid be permitted to stand, or who by representation or bankruptcy shall stand in the place of any such anonymous partner, shall appear to the Lord Chancellor, Lord Keeper, or Commissioners for the Great Seal for the time being, in this kingdom, either on a hearing upon affidavits in a summary way, or in such other manner as the said Lord Chancellor, Lord Keeper, or Commissioners for the Great Seal shall for that purpose direct to have made any colourable or fictitious payments or payment to the acting partner or partners of all or any part of the sum subscribed by the said partnership deed, or by any means whatsoever during the said partnership, knowingly to have gotten or received any greater proportion of the profits of the said partnership dealing than is allowed to any such anonymous partner by this act, or to have done or caused to be done, or to have consented to the doing of any matter or thing to elude the provisions made by this act, or to deceive or defraud any of his co-partners or any creditor or creditors of said partnership, that then and in every such case every such person so offending shall be as subject to the laws against bankrupts as if such person or persons originally were an acting partner or partners in the

Partners or representatives committing any fraud relative to the partnership, subject to Bankrupt laws.

said company, anything hereinbefore contained to the contrary in any wise notwithstanding.

Acting partners not keeping regular books, as herein, &c.

XVII.—And be it further enacted by the authority aforesaid, that any such acting partner or partners who shall not during the term of such partnership keep honestly and fairly a book or books in the which shall be entered an account of all his or their dealings, bills of exchange, drawn, endorsed or accepted by him or them, and of his or their debts and credits, as well on account of the said partnership as on the foot of any other private dealing or dealings whatsoever, and of his or their expences in housekeeping, and who shall not make out an inventory once in every year during the term of the said partnership, in such book or books of all the said partnership effects and his or their private effects, (save furniture and wearing apparel) and of the debts and credits on the foot of the said partnership, his or their private dealings, (if any) specifying the profits and losses on the same for the time being, or who shall make use of any money, bills, notes or any other securities, or of any goods, wares, effects or merchandizes belonging to any such partnership, or who shall make use of the firm or credit of any such partnership to raise any sum of money whatsoever, or to contract any debt whatsoever, save for the use, purpose and benefit of such partnership; or who shall wilfully and designedly refuse, neglect or delay to state and settle accounts with his or their co-partners, and to hand over to them respectively such balance or balances, sum and sums of money as shall, pursuant to the true intent and meaning of this Act, and the deed or deeds of partnership entered into with the person or persons so refusing, neglecting or delaying, that then, and in every such case, it shall and may be lawful to and for the said anonymous partner or partners to deduct and recover out of the capital stock and the produce thereof of such acting partner or partners so offending, the sum of twenty pounds for each hundred pounds of such capital stock and the produce thereof of such acting partner or partners so offending as aforesaid over and above and without prejudice to any remedy or relief either at Law or in Equity, which such anonymous partner or partners might or could have for or on account of any such neglect or misconduct as aforesaid of such acting partner or partners, if no such provision to prevent the same had been made by this present Act.

or who shall use money or credit of partnership on private account, &c.,

forfeit to anonymous £20 per cent. for every £100.

Bankers or shops selling by retail not within this act.

XVIII.—Provided always, and be it further enacted by the authority aforesaid, that no co-partnership for carrying on the business of bankers or discounters of money for shopkeepers selling by retail, shall be considered as formed under this Act, or to receive any sanction or benefit therefrom, any thing hereinbefore contained to the contrary in anywise notwithstanding.

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52 GEO. 3, Cap. 144.

An Act to suspend and finally vacate the Seats of Members of the House of Commons, who shall become Bankrupts, and who shall not pay their Debts in full within a limited time.

[23rd *July,* 1812.]

Declaring seats of M.P.'s vacant in certain cases of Bankruptcy.

Whereas it is highly necessary, for the preservation of the dignity and independence of parliament, that members of the House of Commons of the United Kingdom, who become Bankrupts, and do not pay their debts in full, shall not retain their seats: Be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this Act, whenever a Commission of Bankruptcy shall issue and be awarded against any person being a member of the House of Commons, and he shall be found and declared a Bankrupt under the same, such member shall be and shall remain during twelve calendar months from the time of the issuing thereof, utterly incapable of sitting and voting in the said House of Commons, unless within the said period such commission shall be superseded, or unless within the same period the creditors of such member of the House of Commons proving their debts under the Commission of Bankruptcy shall be paid or satisfied to the full amount of their debts, under the said Commission: Provided always, that such of the debts, if any, as shall be disputed by such bankrupt, if he shall, within the time aforesaid, enter into a bond or bonds, in such sum or sums, with two sufficient sureties to be approved by the Commissioners under the said Commission of Bankruptcy, or the major part of them, to pay such sum or sums of money as shall be recovered in any action, suit, or other proceeding in law or equity, concerning such debt or debts, together with such costs as shall be given in the same, shall be considered for the purposes of this Act as paid or satisfied.

Speaker to issue writ for new election of another.

II.—And be it further enacted by the authority aforesaid, That if the said Commission shall not within twelve calendar months from the issuing thereof be superseded, nor the debts satisfied in manner aforesaid, then the Commissioners, or the major part of them named in such Commission, shall and they are hereby required, immediately after the expiration of twelve calendar months from the issuing of the said commission, to certify the same, as the case may be, to the speaker of the House of Commons of the United Kingdom, and thereupon the election of such member shall be and is hereby declared to be void; and it shall and may be lawful for the speaker of the House of Commons for the time being, during any recess of the said House, whether by prorogation or adjournment, and he is hereby required forthwith after receiving such certificate, to cause notice thereof to be inserted in the *London Gazette*, and upon the expiration of fourteen days after the day of inserting such notice in the *Gazette*, to issue his warrant to the clerk of the crown, to make out a new writ for electing another member in the room of such member who shall have so vacated his seat: Provided always, that nothing herein contained shall extend to enable the speaker of the House of Commons to issue his warrant for the purposes aforesaid, unless such certificate shall have been delivered to him so long before the then next meeting of the House of Commons for the dispatch of business, as that the writ for the election may be issued before the day of such next meeting of the House of Commons.

Extending provisions of 24 Geo. 3, c. 26.

III.—And be it further enacted by the authority aforesaid, That all and every of the powers contained in an Act of the twenty-fourth year of the reign of his present Majesty, for repealing so much of two former Acts as authorized the speaker of the House of Commons to issue his warrant to the clerk of the crown for making out writs for the election of members to serve in parliament in the manner therein mentioned, and for substituting other provisions for the like purposes, so far as such powers enable the speaker of the House of Commons to nominate and appoint other persons, being members of the House of Commons, to issue warrants for the making out of new writs during the vacancy of the office of speaker, or during his absence out of the realm, shall be and they are hereby made to be in force for the purpose of enabling him to make the like nomination and appointment for issuing warrants under the like circumstances and conditions, for the election of members of parliament in the room of such whose seats shall become vacant under the provisions of this Act.

1 & 2 GEO. 4, Cap. 40.

[28th *May*, 1821.]

It is unnecessary to give this short Act, as the state of the law which called forth its provision has been altogether changed. It was passed for the purpose of commuting the punishment for not surrendering under 11 & 12 Geo. 3, c. 8, § 24, Ir., (now rep.) from death to transportation for life or a less term, or imprisonment with hard labour.

4 GEO. 4, Cap. 41.

An Act for the Registering of Vessels.

[27th *June*, 1823.]

(As far as relates to Bankrupts in Ireland.)

Mortgage, &c., of vessels not affected by Bankruptcy of Mortgagor, &c.,

if duly registered, &c.

XLIV.—And be it further enacted, That when any transfer of any ship or vessel, or of any share or shares thereof, shall have been made as a security for the payment of any debt or debts, either by way of mortgage or of assignment as aforesaid, and such transfer shall have been duly registered according to the provisions of this Act, the right or interest of the mortgagee or other assignee as aforesaid, shall not be in any manner affected by any act or acts of Bankruptcy committed by such mortgagor or assignor, mortgagors or assignors, after the time when such mortgage or assignment shall have been so registered as aforesaid, notwithstanding such mortgagor or assignor, mortgagors or assignors, at the time he or they shall so become Bankrupt as aforesaid, shall have in his or their possession, order, and disposition, and shall be the reputed owner or owners of the said ship or vessel or the share or shares thereof, so by him or them mortgaged or assigned as aforesaid; but that such mortgage or other assignment shall take place of and be preferred to any right, claim, or interest, which may belong to the assignee or assignees of such Bankrupt or Bankrupts in such ship or vessel, share or shares thereof, any law or statute to the contrary thereof notwithstanding.

1 & 2 WM. 4, Cap. 31.

An Act to improve the administration of Justice in Ireland.

[5th *October*, 1831.]

(As far as relates to Bankrupts in Ireland.)

Uncertificated Bankrupts not entitled to benefit of Insolvent Acts for 3 years.

XX.—Provided always and be it enacted, That no person petitioning the Court for relief of Insolvent Debtors for relief under any Act relating to Insolvent Debtors in Ireland, who shall have been duly declared Bankrupt before the commencement of his or her imprisonment under any commission remaining in force, and shall not have obtained his or her certificate under such commission, shall be entitled to the benefit of any such Act within the space of three years after such declaration of Bankruptcy, unless three fourths in number and value of the Creditors against whom such person shall seek to be discharged by virtue of such Act or Acts shall signify their assent to such discharge, or it shall be made to appear to the satisfaction of such Court, or of a Commissioner thereof on his circuit, that such person has since such declaration of Bankruptcy endeavoured by industry and frugality to pay all just demands upon him or her, and has incurred no unnecessary expense, and that the debts which such person has incurred subsequent to such declaration of Bankruptcy have been necessarily incurred for the maintenance of such person or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself, or his or her family.

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4 & 5 WM. 4, Cap. 92.

An Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland.

[*15th August*, 1834.]

(*As far as relates to Bankrupts in Ireland.*)

Repeal of the Bankrupt Act, 11 & 12 Geo. 3, c. 8, so far as relates to estates tail, but not to extend to lands of a bankrupt under a commission issued on or before the 31st of October, 1834.

XLVIII. And be it further enacted, that after the thirty-first day of October one thousand eight hundred and thirty-four so much of an act passed in the eleventh and twelfth years of the reign of his majesty King George the Third, intituled "An Act to prevent frauds committed by Bankrupts," as empowers the Commissioners named in any Commission of Bankrupt issued against a tenant in tail to make sale of any lands, tenements, and hereditaments whereof such Bankrupt shall be seised of any estate tail in possession, reversion, or remainder, and whereof no reversion or remainder is in the crown, the gift or provision of the crown, shall be and the same is hereby repealed: Provided always, that such repeal shall not extend to the lands, whatever the tenure may be, of any person adjudged a Bankrupt under any Commission of Bankrupt which hath been or shall be issued before the thirty-first day of October, one thousand eight hundred and thirty-four.

The commissioner, in the case of an actual tenant in tail becoming bankrupt after the 31st Oct. 1834, by deed to dispose of the lands of the bankrupt to a purchaser.

XLIX.—And be it further enacted, That any Commissioner acting in the execution of any Commission which after the thirty-first day of October, one thousand eight hundred and thirty-four, shall be issued in pursuance of the said Act passed in the eleventh and twelfth years of King George the Third, under which any person shall be adjudged a Bankrupt, who at the time of issuing such Commission, or at any time afterwards before he shall have obtained his certificate, shall be an actual tenant in tail of lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of such actual tenant in tail, and shall create by any such disposition as large an estate in the lands disposed of as the actual tenant in tail, if he had not become Bankrupt, could have done under this Act at the time of such disposition: provided always, that if at the time of the disposition of such lands, or any of them, by such Commissioner as aforesaid, there shall be a protector of the settlement by which the estate of such actual tenant in tail in the lands disposed of by such Commissioner was created, and the consent of such protector would have been requisite to have enabled the actual tenant in tail, if he had not become Bankrupt, to have disposed of such lands to the full extent to which if there had been no such protector he could under this act have disposed of the same, and such protector shall not consent to the disposition, then and in such case the estate created in such lands, or any of them, by the disposition of such Commissioner, shall be as large an estate as the actual tenant in tail, if he had not become Bankrupt, could at the time of such disposition have created under this Act in such lands without the consent of the protector.

Commissioner, in case of a tenant in tail entitled to a base fee becoming bankrupt, and of

L.—And be it further enacted, That any Commissioner acting in the execution of any such Commission as aforesaid, under which any person shall be adjudged a Bankrupt who, at the time of issuing such Commission, or at any time afterwards before he shall have obtained his certificate, shall be there being no protector, by deed to dispose of the lands of bankrupt to a purchaser.

a tenant in tail entitled to a base fee in lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration for the benefit of the creditors of the person so entitled as aforesaid, provided at the time of the disposition there be no protector of the settlement by which the estate tail converted into the base fee was created, and by such disposition the base fee shall be enlarged into as large an estate as the same could at the time of such disposition have been enlarged into under this Act by the person so entitled if he had not become Bankrupt.

As to the consent of the protector in case of bankruptcy.

LI.—And be it further enacted, That the Commissioner acting in the execution of any such Commission as aforesaid, under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a Bankrupt, shall, if there shall be a protector of the settlement by which the estate tail of such actual tenant in tail, or the estate tail converted into a base fee (as the case may be), was created, stand in the place of such actual tenant in tail, or tenant in tail so entitled as aforesaid, so far as regards the consent of such protector; and the disposition of such lands or any of them by such Commissioner as aforesaid, if made with the consent of such protector, shall, whether such Commissioner may have made under this Act a prior disposition of the same lands without the consent of such protector or not, or whether a prior sale or conveyance of the same lands shall have been made or not, under the said Act of the eleventh and twelfth years of King George the Third, or any acts hereafter to be passed concerning Bankrupts, have the same effect as such disposition would have had if such actual tenant in tail, or tenant in tail so entitled as aforesaid, had not become Bankrupt, and such disposition had been made by him under this Act with the consent of such protector; and all the previous clauses in this Act, in regard to the consent of the protector to the disposition of a tenant in tail of lands not held by copy of court roll, and in regard to the time and manner of giving such consent, and in regard to the inrolment of the deed of consent, where such deed shall be distinct from the assurance by which the disposition of the Commissioner shall be effected, shall, except so far as the same may be varied by the clause next hereinafter contained, apply to every consent that may be given by virtue of this present clause.

As to the inrolment of the deed of disposition of lands.

LII.—And be it further enacted, That every deed by which any Commissioner acting in the execution of any such Commission as aforesaid, shall, under this Act, dispose of lands, shall be void unless inrolled in his Majesty's high Court of Chancery in Ireland within six calendar months after the execution thereof.

Subsequent enlargement of base fees created by the disposition of commissioner.

LIII.—And be it further enacted, That if any Commissioner acting in the execution of any such Commission as aforesaid, shall, under this Act, dispose of any lands of any tenure, of which the Bankrupt shall be actual tenant in tail, and in consequence of there being a protector of the settlement by which the estate of such actual tenant in tail was created, and of his not giving his consent, only a base fee shall by such disposition be created in such lands; and if at any time afterwards during the continuance of the base fee there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, such base fee shall be enlarged into the same estate into which the same could have been enlarged under this Act, if at the time of the disposition by such Commissioner as aforesaid there had been no such protector.

Enlargement of base fees subsequent to the sale of conveyance of the same under the bankrupt acts.

LIV.—And be it further enacted, That if a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a Bankrupt at the time when there shall be a protector of the settlement by which the estate tail converted into the base fee was created, and if such lands shall be sold or conveyed under the said Act of the eleventh and twelfth years of King George the Third, or any other Act hereafter to be passed concerning Bankrupts, and if at any time afterwards during the continuance of the base fee in such lands, there shall cease to be a protector of such settlement, then, and in such case, and immediately thereupon, the base fee in such lands shall be enlarged into same estate into which the same could have been enlarged under this Act, if at the time of the adjudication of such Bankruptcy there had been no such protector, and the Commissioner acting in the execution of the Commission under which the tenant in tail so entitled shall have been adjudged a Bankrupt, had disposed of such lands under this Act.

A voidable estate created in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a bank fee becoming bankrupt, confirmed by the disposition of the commissioner, if no protector, or being such with his consent, or on there ceasing to be a protector; but not against a purchaser without notice.

LV.—Provided always, and be it further enacted, That where an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall be adjudged a Bankrupt under any such Commission as aforesaid, and the Commissioner acting in the execution of such Commission shall make any disposition under this Act of the lands in which such voidable estate shall be created, or any of them, then and in such case, if there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or being such protector he shall consent to the disposition by such Commissioner as aforesaid, whether such Commissioner may have made under this Act a previous disposition of such lands or not, or whether a prior sale or conveyance of the same lands shall have been made or not under the said Act of the eleventh and twelfth years of King George the Third, or any other acts hereafter to be passed concerning Bankrupts, the disposition by such Commissioner shall have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons, except those whose rights are saved by this act; and if at the time of the disposition by such Commissioner, in the case of an actual tenant in tail, there shall be a protector, and such protector shall not consent to the disposition by such Commissioner, and such actual tenant in tail, if he had not been adjudged a Bankrupt, would not without such consent have been capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such actual tenant in tail, if he had not been adjudged a Bankrupt, could at the time of such disposition have been capable under this Act of confirming the same without such consent; and if at any time after the disposition of such lands by such Commissioner, and while only a base fee shall be subsisting in such lands, there shall cease to be a protector of such settlement, and such protector shall not have consented to the disposition by such Commissioner, then and in such case such voidable estate, so far as the same may not have been previously confirmed, shall be confirmed to its full extent as against all persons except those whose rights are saved by this Act; provided always, that if the disposition by any such Commissioner as aforesaid shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, and if the deed or instrument making such voidable estate shall not have been registered previous to such disposition, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him.

Acts of a bankrupt tenant in tail void against any disposition under this act by the commissioner.

LVI.—And be it further enacted, That all acts and deeds done and executed by a tenant in tail of lands of any tenure, who shall be adjudged a Bankrupt under any such Commission as aforesaid, and which shall affect such lands or any of them, and which, if he had been seised of or entitled to such lands in fee simple absolute, would have been void against the assignees of the Bankrupt's estate, and all persons claiming under them, shall be void against any disposition which may be made of such lands under this Act by such Commissioner as aforesaid.

Subject to the powers given to the commissioner, and to the estate in the assignees, a bankrupt tenant in tail shall retain his powers of disposition.

LVII.—Provided always, and be it further enacted, That, subject and without prejudice to the powers of disposition given by this Act to the Commissioner acting in the execution of any such Commission as aforesaid under which a person being, or before obtaining his certificate becoming an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a Bankrupt, and also subject without prejudice to the estate in such lands which may be vested in the assignees of the Bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said assignees in respect of such lands, or any of them, such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall have the some powers of disposition under this Act in regard to such lands as he would have had if he had not become Bankrupt.

The disposition by the commissioner of the lands of a bankrupt tenant in tail shall, if the bankrupt be dead, have in the cases herein mentioned the same operation as if he were alive.

LVIII.—And be it further enacted, That any disposition under this Act of lands of any tenure, by any Commissioner acting in the execution of any such Commission as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of such lands, or a tenant in tail entitled to a base fee in such lands, shall be adjudged a Bankrupt, shall, although the Bankrupt be dead at the time of the disposition, be in the following cases as valid and effectual as the same would have been, and have the same operation under this Act as the same would have had, if the Bankrupt were alive; (that is to say,) in case at the time of the Bankrupt's decease there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, (as the case may be,) was created; or in case the Bankrupt had been an actual tenant in tail of such lands, and there shall at the time of the disposition be any issue inheritable to the estate tail of the Bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement who in the manner required by this Act shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition; or in case the Bankrupt had been a tenant in tail entitled to a base fee in such lands, and there shall at the time of the disposition be any issue who if the base fee had not been created would have been actual tenant in tail of such lands, and either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement who in the manner required by this Act shall consent to the disposition.

Assignees to recover rents of the lands of a bankrupt of which the commissioner has power to make disposition and to enforce covenants, as if entitled to the reversion.

LIX.—And be it further enacted, That the rents and profits of any lands of which any Commissioner acting in the execution of any such Commission as aforesaid hath power to make disposition under this Act shall, in the meantime and until such disposition shall be made, or until it shall be ascertained that such disposition shall not be required for the benefit of the creditors of the person adjudged Bankrupt under the Commission, be received by the assignees of the estate of the Bankrupt for the benefit of his creditors; and the assignees may proceed by action of debt for the recovery of such rents and profits, or may distrain for the same upon the lands subject to the payment thereof, and in case any action of trespass shall be brought for taking any such distress, may plead thereto the general issue, and give this Act or other special matter in evidence, and also, in case any such distress shall be replevied, shall have power to avow or make cognizance generally in such manner and form as any landlord may now do by virtue of the statute made in the fifteenth year of the reign of his Majesty King George the Second, intituled "an Act for the more effectual securing the payment of rents, and preventing frauds by tenants," or by any other law or statute now in force or hereafter to be made for the more effectually recovering of rent in arrear; and such assignees, and their bailiffs, agents, and servants, shall also have all such and the same remedies, powers, privileges, and advantages of pleading, avowing, and making cognizance, and be entitled to the same costs and damages, and the same remedies for the recovery thereof, as landlords, their bailiffs, agents, and servants, are now or hereafter may be by law entitled to have when rent is in arrear; and such assignees shall also have the same power and authority of enforcing the observance of all covenants, conditions, and agreements in respect of the lands of which such Commissioner as aforesaid hath the power of disposition under this Act, and in respect of the rents and profits thereof, and of entry into and upon the same lands for the non-observance of any such covenant, condition and agreement, and of expelling and amoving therefrom the

15 Geo. 2, c. 8.

tenants and other occupiers thereof, and of proceeding under the various statutes passed in Ireland, providing the remedies of ejectment for the nonpayment of rent, and thereby determining and putting an end to the estate of the persons who shall not have observed such covenants, conditions, and agreements, as the Bankrupt would have had in case he had not been adjudged a Bankrupt; provided always, that this clause shall apply to lands of any tenure which any Commissioner acting in the execution of any such Commission as aforesaid may have power to dispose of under this Act after the Bankrupt's decease.

Clause to apply to lands of any tenure, &c.

LX.—And be it further enacted, That all the provisions in this Act contained for the benefit of the creditors of persons who, under such Commissions as aforesaid, shall be adjudged Bankrupts after the thirty-first day of October, one thousand eight hundred and thirty-four, and for the confirmation in consequence of Bankruptcy of voidable estates created by them, shall extend and apply to the lands of any tenure in England of such persons, as fully and effectually as if this Act had throughout extended to lands of any tenure in England.

All the provisions of the act in regard to bankrupts shall apply to their lands in England.

LXI.—Provided always, and be it further enacted, That in all cases of Bankruptcy every deed of disposition under this act of lands in England by any Commissioner acting in the execution of any such Commission as aforesaid, and also every deed by which the protector of a settlement of lands in England shall consent, shall be inrolled in his Majesty's high Court of Chancery in England within six calendar months after the execution thereof, and not in his Majesty's high Court of Chancery in Ireland.

Deeds relating to the lands of bankrupts in England to be inrolled in the court of chancery there.

LXIII.—And be it further enacted, That lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall for all the purposes of this act be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this act, so far as circumstances will admit, shall in the case of the lands to be sold as aforesaid, being either freehold or leasehold, or of any other tenure, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled, and shall, in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; save and except that in every case where under this clause a disposition shall be to be made of leasehold lands for years, absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate; and except in case of Bankruptcy the assurance by which the disposition of such leasehold lands or money shall be effected shall be an assignment by deed, which shall have no operation under this act, unless inrolled in his Majesty's high Court of Chancery within six calendar months after the execution thereof; and in every case of Bankruptcy the disposition of such leasehold lands or money shall be made by the Commissioner, and completed by inrolment in the same manner as herein-before required in regard to lands.

The previous clauses, with certain variations, to apply to lands of any tenure to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and where money is subject to be invested in like manner.

LXIV.—And be it further enacted, That, so far as regards any person adjudged a Bankrupt under any such Commission as aforesaid, the provisions of the clause lastly herein-before contained shall, for the benefit of the creditors of the Bankrupt, apply to lands in England to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be

Lands of any tenure in England to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and money under the control of a court of equity in England, subject to be invested in like manner, to be subject to this act in cases of bankruptcy.

settled so that the Bankrupt, if the lands were purchased, would have an estate tail therein, and also to money under the control of any Court of Equity in England, or of or to which any individuals as trustees may be possessed or entitled in England, and which shall be subject to be invested in the purchase of lands to be settled so that the Bankrupt, if the lands were purchased, would have an estate tail therein, as fully and effectually as if this act had throughout extended to England: provided always, that every deed to be executed by any Commissioner or protector in pursuance of this clause, in regard to lands in England to be so sold as aforesaid, shall be inrolled in his Majesty's high Court of Chancery in England within six calendar months after the execution thereof: but every deed to be executed by any Commissioner or protector in pursuance of this clause, in regard to money subject to be invested in the purchase of lands to be so settled as aforesaid, shall be inrolled in his Majesty's high Court of Chancery in Ireland within six calendar months after the execution thereof, and not in his Majesty's high Court of Chancery in England.

As to deeds being acknowledged before inrolment.

LXV.—And be it further enacted, That any rule or practice requiring deeds to be acknowledged before inrolment shall not apply to any deed by this act required to be inrolled in his Majesty's high Court of Chancery in Ireland.

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1 VICTORIA, Cap. 48.

An Act to appoint a second Commissioner of Bankrupt in Ireland, and to amend an Act passed in the sixth and seventh years of the reign of his late Majesty King William the Fourth, intituled an Act to amend the laws relating to Bankrupts in Ireland.

[12*th July*, 1837.]

6 & 7 Wm. 4, c. 14.

I.—Whereas by an Act passed in the last session of Parliament, in the 6th year of the reign of his late Majesty King *William* the Fourth, intituled "*An Act to amend the laws relating to Bankrupts in* Ireland," it was enacted, That it should be lawful for the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being, to appoint a fit and proper person, being a barrister at law of not less than ten years standing at the bar, to be the Commissioner in all commissions of Bankrupt to be issued pursuant to the said recited act, and to be called the Commissioner of Bankrupt, which Commissioner so to be appointed shall hold his office during good behaviour, and that all commissions of Bankrupt issued under the Great Seal of that part of the United Kingdom called *Ireland*, by virtue of said recited act, should be issued to the said Commissioner, and that there should be paid and payable out of the monies standing to the Bankruptcy and Compensation Fund account to the Commissioner of Bankrupt, to be appointed by virtue of said recited act, the yearly sum of one thousand five hundred pounds, by four quarterly payments as therein mentioned: And whereas John Macan, Esquire, one of her Majesty's Council at law, was duly appointed the Commissioner of Bankrupt under the said recited act, and it has been found that the business of the Court of the said Commissioner of Bankrupt and of matters of Bankruptcy therein cannot be discharged by one Commissioner, and that the public service requires that a second Commissioner of Bankrupt should be appointed for the due discharge of said business, Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice of the Lords spiritual and temporal and Commons in this present Parliament assembled, and by the authority of the same that from and after the passing of this act it shall and may be lawful for her Majesty, her heirs and successors by Commission under the Great Seal of *Ireland* to appoint a fit and proper person, being a barrister at law of not less than ten years standing at the bar, to

Her Majesty may appoint a second Commissioner.

be a Commissioner of Bankrupt in *Ireland*, and to be called the second Commissioner of Bankrupt, which said second Commissioner so to be appointed shall hold his office during good behaviour, notwithstanding the demise of her Majesty, (whom God long preserve) or any of her heirs and successors, provided always that it may be lawful for her Majesty, her heirs and successors to remove such second Commissioner upon the addresses of both houses of Parliament.

Oath of second Commissioner.

All Commissions to be issued to both.

Full power to either Commissioner to act alone.

II.—And be it enacted, That such second Commissioner before he shall be capable of acting in the execution of any of the powers and authorities given him by virtue of this act and the said recited act, shall take the oath in the said recited act contained and directed to be taken by the Commissioner of Bankrupt under the said recited act, and that all commissions of Bankrupt to be issued under the Great Seal of that part of the United Kingdom called *Ireland*, shall be issued to both said Commissioners, provided however that each of the said Commissioners shall have full power, jurisdiction and authority to proceed in the execution of any commission in the absence of the other as fully and effectually to all intents and purposes as if such commission was directed to him alone; and every act of any one Commissioner in the absence of the other shall be as valid as if done by both save only that it shall not be lawful for any one Commissioner without the consent of the other to rescind any order made by the other when sitting alone.

The second Commissioner to have all the powers, &c. of Commissioner under 6 W. 4, c. 14.

III.—And be it enacted, That the said second Commissioner to be appointed under this act shall have as well in all commissions now subsisting as in those to be hereafter issued all and every the rights, powers, jurisdiction and authority, and be subject to all the duties of any Commissioner appointed or to be appointed under the said recited act; and that all and every the enactments, clauses and provisions of the said recited act shall extend and be applied to the said second Commissioner of Bankrupt to all intents and purposes whatsoever as fully and effectually as if such second Commissioner were appointed under the said recited act.

Her Majesty may appoint first Commissioner when vacancy may occur.

IV.—And be it further enacted, That upon the death, resignation, or removal of the first Commissioner already appointed or to be appointed under the powers of the said act, it shall not be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being to appoint any person to be the first Commissioner in place of such first Commissioner so dying, resigning or removed, but it shall and may be lawful for her Majesty, her heirs and successors by commission under the Great Seal of Ireland to appoint a fit and proper person, being a barrister at law of no less than ten years standing at the bar, to be a Commissioner of Bankrupt in Ireland and to be called the first Commissioner of Bankrupt, and to exercise all the duties and to have all the rights, incidents and privileges specified in the said recited act with respect to the Commissioner of Bankrupt, whom the Lord Lieutenant or other chief governor or governors of Ireland for the time being were by the said recited act authorized to appoint.

First Commissioner to hold his office notwithstanding demise of her Majesty.

V.—And be it further enacted, That the first Commissioner already appointed or any other first Commissioner appointed upon his death, resignation or removal shall hold his office notwithstanding the demise of her Majesty, (whom God long preserve) or any of her heirs and successors, and shall not be removed by the Lord Lieutenant or other chief governor or governors of Ireland for the time being, any law or statute to the contrary notwithstanding, provided always that it may be lawful for her Majesty, her heirs and successors to remove such first Commissioner or other such Commissioner upon the address of both houses of Parliament.

Salary of £1,500 to be paid to the second Commissioner.

VI.—And be it further enacted, That from and after the appointment of said second Commissioner there shall be paid to him and his successors in office out of the monies standing to the Bankruptcy and Compensation Fund account the yearly sum of one thousand five hundred pounds, the which said sum shall be paid at the same time and in like manner as the salary provided by said recited act is directed to be paid to the Commissioner thereby appointed, and the Commissioner appointed by virtue of this act or his successors and administrators shall be entitled to the like proportional part of his salary in the event of his removal, resignation or death as is provided by said recited act for said Commissioner thereby appointed.

£4 to be paid for every sitting before the Commissioner.

VII.—And be it enacted, That in lieu of the fee of three pounds sterling payable by the said recited act for every sitting under any Commission there shall be paid for every sitting under any commission before either of said Commissioners the sum of four pounds sterling, to be paid or abated as in said recited act is provided with reference to the said former fee of three pounds.

Power to appoint assistant registrar.

VIII.—And be it enacted, That it shall and may be lawful for the Lord Chancellor of Ireland if he shall think necessary for the proper discharge of the business of the Court of said Commissioners to appoint some proper person to act as Assistant Registrar of said Court, and to direct that a salary not exceeding three hundred pounds per annum shall be paid to him out of the said Bankruptcy and Compensation Fund, and from time to time to remove such Assistant Registrar if he shall think fit, and on his removal or on his resignation or death to appoint another person in his place.

Repeal of provision as to messengers suing out Commissions of Bankruptcy, &c.

IX.—And whereas it is by said recited act enacted, That any person or persons acting as messenger or messengers and who shall issue any Commission of Bankruptcy or when issued out shall act as agent in such commission, shall from such time be considered incapable for ever after of holding the office of messenger in any Commission of Bankrupt; be it enacted, that the said last recited enactment be and the same is hereby repealed.

Provision in lieu thereof.

X.—And be it enacted, That if any messenger or messengers shall sue out or prosecute any Commission of Bankrupt or shall act as agent in any Commission of Bankruptcy, he or they shall from such time be incapable for ever after of holding the office of messenger in any Commission of Bankrupt, and every messenger shall, before the Commissioner executes his warrant of seizure to him, take before the Commissioner the oath required by the said recited act.

Attorney-General may sue for penalties for taking unlawful fees, &c.

XI.—And be it further enacted, That if any person shall take any fee, emolument, gratuity, sum of money, or thing or value contrary to the provisions of the said recited act, such person so offending shall be subject and liable to all the penalties and forfeitures enacted by the said act, and may be prosecuted either by information at the suit of her Majesty's Attorney-General or by criminal information before her Majesty's Court of Queen's Bench, or by indictment.

Persons imprisoned under provisions of Acts for riots, &c., in Court not to be prosecuted by Attorney-General.

XII.—And be it further enacted, That no person who under the provisions of the said recited act, and of this act, shall be punished or liable to be punished by imprisonment for riot or disturbance in any Court held by any Commissioner or Commissioners of Bankrupt, or for interrupting in any such Court the Commissioner in the exercise of his duty, shall be prosecuted for such offence or offences by information, at the suit of her Majesty's Attorney-General, or by criminal information before her Majesty's Court of Queen's Bench, or by indictment, anything in the said recited act to the contrary notwithstanding.

Commissions not to abate on demise of the Crown.

XIII.—And be it enacted, That no Commission of Bankrupt heretofore issued, or which shall be hereafter issued, shall be deemed to have abated or shall abate by reason of the demise of the Crown or by the removal, death, or resignation of the Commissioner or Commissioners named therein, and when the Commissioner or Commissioners named in any such Commission shall die, resign or be removed, his or their successor and successors in office, for the time being, shall execute such Commission.

Commencement of Act.

Act may be altered.

XIV.—And be it enacted, That this Act shall commence and take effect on and from and after the fifteenth day of *July*, one thousand, eight hundred and thirty-seven, and that this act may be repealed, altered, or amended during this present Session of Parliament.

2 & 3 VICTORIA, CAP. 86.

An Act to amend an Act passed in the Session holden in the 6th year of His late Majesty King William the Fourth, for amending the laws relating to Bankrupts in Ireland.

[26*th August*, 1839.]

WHEREAS, by an Act passed in the Parliament of Ireland in the Session held in the 11 & 12 years of the reign of King George the Third, intituled *an Act to prevent frauds committed by Bankrupts*, it was enacted that nothing therein contained should extend to any security or securities by judgment obtained before the Bankrupt should become scrivener, salesmaster, banker, broker, factor, dealer in exchange or merchandize, but that all debts so secured should have the same force and effect, priority and preference as if the said Act had not been made; and whereas by an Act passed in the Session of Parliament held in the 6th year of the reign of His late Majesty King William the Fourth, intituled *an Act to amend the Laws relating to Bankrupts in* Ireland the said Act of the 11 & 12 years of the reign of His Majesty King *George* the Third, was repealed; and whereas, by the said Act of the sixth year of the reign of King *William* the Fourth no provision was made for preserving the priority and effect of judgment debt of Bankrupts secured by judgments obtained before such Bankrupts became traders. Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same that nothing contained in the said Act passed in the Session held in the sixth year of the reign of King *William* the Fourth shall extend to any security or securities by judgment obtained before the 1st day of *July*, 1836, and before the Bankrupt became a trader liable to become a bankrupt; but debts so secured shall have the same force and effect, priority and preference as if the said last-mentioned Act had not been passed. Provided always that nothing in this Act contained shall repeal or alter, or in any manner affect the operation of the said last-mentioned Act, so far as relates to any lands, tenements, hereditaments or property, or to any judgment affecting, or which, if the said last-mentioned Act had not been passed, would affect any lands, tenements, hereditaments or property which shall have been sold, or in pursuance of any order or direction of the Commissioners of Bankrupt in *Ireland*, or either of them, shall have been contracted to be sold before the passing of this Act.

Nothing in 6 & 7 Wm. 4, c. 14, to extend to judgments obtained before 1st July, 1836, and before the Bankrupt became a trader.

This Act not to apply where sales or contracts for sales under the Bankrupt Commissioners have been made.

II.—And be it enacted that this Act may be amended or repealed by any act to be passed in the present Session of Parliament.

Act may be altered this Session.

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3 & 4 VICTORIA, CAP. 105.

(As far as relates to Bankrupts in Ireland.)

VIII.—See this section now virtually though not actually repealed, p. 103, *ante*.

XXVII.—And be it enacted that all decrees and orders of the Court of Chancery and of the Court of Exchequer at the Equity side thereof, and all Rules of any of the superior Courts of Common Law, and all Orders of the Lord Chancellor or Master of the Rolls, or of the Court of Commissioners of Bankruptcy, and all Orders of the Lord Chancellor in matters of Lunacy whereby any sum of money or any costs, charges or expenses shall be payable to any person, shall have the effect of judgments in the superior Courts of Common Law, and the persons to whom any such monies or costs, charges or expenses shall be payable shall be deemed judgment creditors within the meaning of this Act; and all powers hereby given to the Judges of the

Decrees and orders of Courts of Equity, &c., to have effect of judgments.

superior Courts of Common Law, with respect to matters depending in the same Courts, shall and may be exercised by the Courts of Chancery and Exchequer at the Equity side thereof, with respect to matters therein depending, and by the Lord Chancellor, Master of the Rolls and Court of Commissioners of Bankrupt respectively, in matters of Bankruptcy, and by the Lord Chancellor in matters of Lunacy, and all remedies hereby given to judgment creditors are in like manner given to person to whom any monies or costs, charges or expenses are by such orders or rules respectively directed to be paid, and the date of the same and amount due on foot thereof shall be stated in any petition for a receiver under the said Act of the 5 & 6 years of the reign of his late Majesty King *William* the Fourth, and this Act as in the case of a petition founded on a judgment entered or recovered in any of such superior Courts of Law as aforesaid.

No decree, &c., to affect real estate until registered.

XXVIII.—Provided always, and be it enacted, That no decree or order in any Court of Equity, nor any Rule of a Court of Common Law, nor any Order in Bankruptcy or Lunacy shall by virtue of this Act affect any lands, tenements or hereditaments, as to purchasers, mortgagees or creditors, unless and until a memorandum or minute containing the name and the usual or last known place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and the Court and the title of the cause or matter in which such decree, order or rule shall have been obtained or made, and the date of such decree, order or rule, and the amount of the debt, damages, costs or monies thereby recovered or ordered to be paid, shall be left with such person, being any officer of the Court of Chancery or of the Court of Exchequer, as the Lord Chancellor, Master of the Rolls and Lord Chief Baron, shall appoint any notice of any such decree, order or rule to any purchaser, mortgagee or creditor in any wise notwithstanding, and such officer shall forthwith enter the same particulars in a book in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, decree, order or rule, and such officer shall be entitled for any such entry to the sum of five shillings, and all persons shall be at liberty to search the same book on payment of the sum of one shilling.

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3 & 4 VICTORIA, Cap. 107.

(As far as relates to Bankrupts in Ireland.)

Filing petition an act of Bankruptcy if acted upon within a certain time, in which case the order avoided.

XXVII.—And be it enacted that the filing of the petition of every person in actual custody, who shall be subject to the Laws concerning Bankrupts, and who shall apply by petition to the said Court for his discharge from custody according to this Act, shall be accounted and adjudged an Act of Bankruptcy from the time of filing such petition; and that any Commission of Bankruptcy issuing against such person and under which he shall be declared Bankrupt before the time appointed by the said Court, and advertised in the *Dublin Gazette*, for such prisoner to be brought up to be dealt with according to this Act, or at any time within two calendar months from the time of making any such vesting order as aforesaid, whether upon the petition of such prisoner or the petition of any such creditor as aforesaid, shall have the effect of divesting the said real and personal estate and effects of such person out of the said provisional assignee; provided always, that the filing of such petition shall not be deemed an Act of Bankruptcy, unless such person be so declared Bankrupt before the time so advertised as aforesaid, or within such two calendar months as aforesaid; but that every such order as aforesaid shall be good and valid notwithstanding any Commission of Bankruptcy under which such person shall be declared Bankrupt after the time so advertised as aforesaid, and after the expiration of such two calendar months as aforesaid.

Order to be filed, although avoided

XXVIII.—Provided always, and be it enacted, That where the order vesting the estate and effects of any such prisoner in the provisional assignee of the said Court in pursuance of the provisions of this Act, shall be, or become void, by reason of such prisoner being declared Bankrupt within such period as above mentioned, or being an uncertified Bankrupt at the time of such order, the said order shall nevertheless, together with the petition of such prisoner (if any), remain of record in the said Court, and the said Court shall and may require such prisoner to file his schedule, and shall and may cause such prisoner to be brought up to be dealt with according to this Act, and all things to be done thereupon or preparatory thereto as in other cases according to this Act, and the said Court shall and may at any time when it shall seem fit appoint other assignee or assignees in such case in the same manner as in other cases; and that if at any time after such vesting order shall have been made such prisoner shall obtain his certificate under any such Commission of Bankruptcy, the rights, powers, title and interest of the provisional assignee and other assignee or assignees appointed under this Act over and respecting any property real and personal whatsoever remaining to such prisoner after the obtaining of such certificate or thereafter in any way coming to him, and under and in pursuance of the warrant of attorney to be executed by such prisoner under the provisions of this Act, shall from and after the obtaining of such certificate be the same as if the vesting order made under this Act had been valid at the time of the making thereof; provided always that nothing herein contained shall be construed to affect the title, rights and interests of the assignees under any such Commission of Bankruptcy, or to alter or diminish the effect of any such certificate as aforesaid; but that the title, rights and interests of such last-mentioned assignees, and the benefit of such certificate to such prisoner, shall be the same to all intents and purposes as if this Act had not been made.

by Commission of Bankruptcy.

And Court shall proceed to hear and adjudicate as in other cases.

If insolvent obtains his certificate the rights of assignees afterwards to be the same as in other cases.

Not to affect title of assignees of Bankrupt or operation of certificate.

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3 & 4 VICTORIA, Cap. 108.

An Act for the regulation of Municipal Corporations in Ireland.

[10*th August*, 1840.]

(*As far as relates to Bankrupts in Ireland.*)

LVIII.—And be it enacted, That no person being in holy orders, or being the regular minister of any dissenting congregation, shall be qualified to be elected or to be a councillor or an alderman, or a municipal Commissioner of any borough, nor shall any person be qualified to be elected, or to be a councillor or an alderman of any borough named in said schedule (A) to this act annexed, who shall not be on the burgess list of such borough, nor unless he shall be seised or possessed of real or personal estate, or of both, of the clear value of one thousand pounds over what will satisfy his debts, or shall occupy, and shall for twelve calendar months next previous have occupied a house rated for the relief of the poor at the net annual value of twenty-five pounds or upwards, situate within the borough, nor shall any person be qualified to be elected or to be a councillor or an alderman of any borough named in the said schedule (B) or other town to which a charter shall have been granted as herein-before is mentioned, who shall not be on the burgess list of the borough for which he is elected, nor to be elected or to be such councillor or alderman, or a municipal commissioner of any borough, unless he shall be seised or possessed of real or personal estate, or of both, of the clear value of five hundred pounds above what will satisfy his debts or shall occupy and shall for twelve calendar months next previous have occupied a house situate within the borough and rated as aforesaid at the net annual value or sum, not more than twenty pounds and not less than fifteen pounds as to her Majesty, with the advice of her privy council, shall seem fit to be specified in such charter, nor shall any

Who not qualified to be chosen Mayor, Alderman, or Councillor, or Commissioner.

person be qualified to be elected or to be a councillor or an alderman or a municipal Commissioner of any such borough during such time as he shall hold any office or place of profit other than that of Mayor in the gift or disposal of the council, Commissioners or charitable trustees of such borough, or while he is an uncertificated Bankrupt or during such time as he shall have directly or indirectly by himself or his partner any share or interest in any contract or employment with by or on behalf of such council, Commissioners or charitable trustees, provided that no person shall be disqualified from being a councillor or alderman or Commissioner of any borough as aforesaid, by reason of his being a proprietor or shareholder of or in any company which shall contract with the council or Commissioners of such borough for lighting or supplying with water any part of the said borough or insuring against fire any property therein.

LXXXVIII.—And be it enacted, That if any person holding the office of mayor, alderman, councillor, or municipal Commissioner for any borough shall be declared Bankrupt, or shall apply to take the benefit of any act for the relief of Insolvent Debtors, or shall compound by deed with his Creditors, or being mayor, be absent for more than two calendar months, or being an alderman, councillor, or municipal Commissioner, for more than six months at one and the same time (unless in case of illness) from the borough of which he shall be mayor, alderman, councillor, or Commissioner, then, and in every such case such person shall thereupon immediately become disqualified and shall cease to hold the office of such mayor, alderman, councillor, or Commissioner as aforesaid, and in case of such absence shall be liable to the same fine to be recovered in the same manner as if he had refused to accept the same office, and the council or board of Commissioners thereupon shall forthwith declare the said office to be void, and shall signify the same by notice in writing under the hands of three or more of them countersigned by the town clerk, to be affixed in some public place within the borough, and the said office shall thereupon become void; but every person so becoming disqualified and ceasing to hold such office on account of his being declared a Bankrupt, or of his applying to take the benefit of any act for the relief of insolvent debtors, or having compounded with his creditors as aforesaid, shall, on obtaining his certificate or on payment of his debts in full be capable, if otherwise qualified, of being re-elected to such office, and every person becoming disqualified to hold such office on account of absence as aforesaid, shall, on his return to such borough, be capable of being re-elected to such office, provided he shall then be otherwise qualified.

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7 & 8 VICTORIA, Cap. 90.

(As far as relates to Bankrupts in Ireland.)

Conveyances, contracts, &c., with Bankrupts, protected where no notice of act of Bankruptcy and made *bona fide*.

XXXVI.—And whereas it is expedient that further provision should be made for the security of persons dealing with Bankrupts, be it therefore enacted that all conveyances by any Bankrupt *bona fide* made and executed, and all contracts, dealings, and transactions by and with any Bankrupt really and *bona fide* made and entered into before the date and issuing of the Commission against such Bankrupt, and all executions and attachments against the lands and tenements, or goods and chattels of such Bankrupt which shall be *bona fide* executed or levied before the date and issuing of such Commission shall be deemed to be valid, notwithstanding any prior Act of Bankruptcy by such Bankrupt committed, provided the person or persons to whom such Bankrupt so conveyed, or the person or persons so dealing with such Bankrupt, or at whose suit or on whose account such execution or attachment shall have been issued, had not at the time of such conveyance, contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior Act of Bankruptcy by such Bankrupt committed: Provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any Bankrupt, being a fraudulent preference of any creditor or creditors of such Bankrupt, or to any execution founded on a judgment, on a warrant of attorney or cognovit given by any Bankrupt by way of such fraudulent preference.

XXXVII.—And be it enacted, That no purchase from any Bankrupt *bona fide* and for valuable consideration, where the purchaser had notice at the time of such purchase of an Act of Bankruptcy by such Bankrupt committed, shall be impeached by reason thereof, unless the Commission against such Bankrupt shall have been sued out within twelve calendar months after such Act of Bankruptcy.

Also even with notice of Act of Bankruptcy unless Commission sued out within twelve months.

XXXVIII.—And whereas, by an Act passed in the sixth year of the reign of his late Majesty King *William* the Fourth, intituled *An Act to amend the Laws relating to Bankrupts in* Ireland, it is provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession or nil dicit, shall avail himself such execution to the prejudice of other fair creditors, but shall be paid rateably with such creditors; and whereas by reason of such provision plaintiffs in actions have been and may be deterred from accepting a cognovit actionem with stay of execution, whereby the expense of further proceedings in such actions might have been, and may be, saved or diminished, for remedy whereof be it enacted, that no judgment signed or execution issued, after the passing of this Act, on a cognovit actionem, signed after declaration filed or delivered, or judgment by default, confession or nil dicit according to the practice of the Court in any action commenced adversely, and not by collusion for the purpose of fraudulent preference, should be deemed or taken to be within the said provision of the said Act of the sixth year of the reign of his late Majesty King *William* the Fourth.

No judgment signed or execution issued on a cognovit signed after declaration filed, &c., or judgment by default, &c., shall be deemed within the provisions of the 6 & 7 Wm. 4, c. 14.

XXXIX.—And whereas by an Act passed in the eighth year of the reign of his Majesty King *George* the First, intituled *An Act for the more effectual quieting and securing possessions and preventing vexatious suits at Law*, it was, amongst other things, provided that all actions and suits in Law or in Equity for recovery of any debt due by single bill or bond under hand and seal, or by judgment statute, staple statute, merchant or recognizance, should, after the lapse of time therein mentioned, be barred, unless upon certain proceedings being taken, or payments, or satisfaction being made as therein respectively mentioned; and whereas since the passing of the said Act certain other statutes have been passed for the limitations of actions upon judgments and other charges upon land, bonds and other specialties and recognizances; and whereas doubts have been entertained whether the provisions of the said Act have been altered or affected by the said later statutes, now for quieting and putting an end to such doubts, it is hereby declared and enacted that the said later Acts were and shall be deemed to be a repeal of the said Act passed in the eighth year of the reign of his late Majesty King *George* the First.

The Act 8 Geo. 1, (1) to be deemed to have been repealed.

XL.—And be it enacted, That the Registrar to be appointed under this Act shall place up in proper and conspicuous parts of his office lists or schedules of the several fees payable under this Act, so that the public may at all times have access to the same.

Lists of fees to be placed up in office.

XLI.—And be it enacted, That this Act shall extend to *Ireland* only.

Act to extend to Ireland only.

8 & 9 VIC. CAP. 98.

An Act for facilitating the winding up the affairs of Joint-stock Companies in Ireland unable to meet their pecuniary engagements.

[*4th August*, 1845.]

'Whereas it is expedient to extend the remedies of creditors against the property of such Joint-stock Companies or bodies as herein-after mentioned

Incorporated or other trading

company committing Act of Bankruptcy as herein, Commission may issue, like as in other cases.

when unable to meet their pecuniary engagements, and to facilitate the winding up of their concerns; and it may also be for the benefit of the public to make better provision for discovery of the abuses that may have attended the formation or management of the affairs of any such companies or bodies, and for ascertaining the causes of their failure:' Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That if any commercial or trading company now or at any time hereafter incorporated by charter or act of parliament, or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes, and to which any privilege or privileges or power or powers shall, before or after the passing of this Act, have been granted, under the authority of the statute made and passed in the first year of the reign of her present Majesty, intituled "An Act for better enabling her Majesty to confer certain powers and immunities on trading and other companies," or by any act of parliament, or any commercial or trading company or body which by the said statute made and passed in the first year of the reign of her present Majesty is to be considered as subsisting, and to be subject to the provisions of the said statute, in manner therein mentioned, or any company or body of persons now or at any time hereafter associated together for any commercial or trading purposes, and registered, either provisionally or completely, under the provisions of an Act passed in the last session of parliament, intituled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies, or any Joint Stock Company now existing and comprehended within the definition therein contained of a Joint Stock Company, shall commit any act which by this Act is to be deemed an Act of Bankruptcy on the part of any such company or body, a Commission of Bankruptcy may issue against such company or body by the name or style of the said company or body, upon the petition of any Creditor or Creditors of such company or body (whether a member or members of such company or body or not), to such amount as is now by law requisite to support a Commission of Bankruptcy; and the Commissioner authorized to act in the prosecution of such Commission, and all persons acting under such Commission, may proceed thereon in like manner as against other Bankrupts, subject always to the provisions herein-after made.

7 Wm. 4, & 1 Vic. c. 73.

7 & 8 V. c. 110.

Not to extend to members individually.

II.—Provided always, and be it enacted, That the Bankruptcy of any such company or body, in its corporate or associated capacity (as the case may be,) shall not be construed to be the Bankruptcy of any member of such company or body in his individual capacity.

Declaration of Insolvency, an act of Bankruptcy.

III.—And be it enacted, That if any such company or body shall, by virtue of a resolution to be duly passed in that behalf at a Board of directors of such company or body duly summoned for that purpose, file or caused to be filed in the office of the Lord Chancellor's Secretary of Bankrupts a declaration in writing, in the Form specified in the Schedule (A.) No. 1. hereunto annexed, that the said company or body is unable to meet its engagements, and also a minute of such resolution in the Form specified in the said Schedule (A.) No. 2, such declaration and minute of resolution respectively being under the common seal of such company or body, and if such company or body have no common seal then signed by the chairman of the board of directors who was present at the passing of such resolution, and in either case such declaration and minute of resolution being respectively attested by the attorney or solicitor of the said company or body for the time being, every such company or body shall be deemed thereby to have committed an Act of Bankruptcy at the time of filing such declaration, provided a Commission of Bankruptcy shall issue against such company or body within two calendar months from the filing of such declaration; and a copy of such declaration and minute of Resolution respectively, purporting to be certified by the said secretary or his clerk as a true copy, shall be received as evidence of such declaration and minute of resolution respectively having been filed by such company or body, and that upon such evidence being given, and upon proof by the attesting witness of the sealing or signature, as the case may be, of the said declaration and minute of resolution, no further evidence shall be required of the said Act of Bankruptcy.

Not paying, or securing, &c. certain Judgments, an Act of Bankruptcy.

IV.—And be it enacted, That if any plaintiff shall recover judgment in any action personal for the recovery of any debt or money demand in any of her Majesty's Courts of Record, against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off, or which may be legally set off against such judgment and such company or body shall not, within fourteen days after notice in writing served upon the said company or body, by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination,) on any director of the said company or body personally, or by the same having been left at the head office for the time being of such company or body, requiring immediate payment of such judgment debt, pay, secure, or compound for the same to the satisfaction of such plaintiff, such company or body shall be deemed to have committed an Act of Bankruptcy on the fifteenth day after service of such notice: Provided always, that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any court of justice having jurisdiction in that behalf, no further proceeding shall be had on such notice, but that it shall be lawful, nevertheless, for such plaintiff, when he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner before directed.

Disobeying order of Court, an Act of Bankruptcy.

V.—And be it enacted, That if any decree or order shall be pronounced in any cause depending in any Court of Equity, or any order shall be made in any matter of bankruptcy or lunacy against any such company or body, or against any person duly authorized to be sued as the nominal defendant on behalf of such company or body, ordering any sum of money to be paid by such company or body, and such company or body shall disobey such decree or order, the same having been served upon such company or body by service of the same on a chief clerk or secretary or registrar of the said company or body, or (if there be no officer of such denomination) on any director of the said company or body personally, or by the same having been left at the head office for the time being of such company or body, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may apply to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose; and if such company or body, being served in manner aforesaid with such last-mentioned order fourteen days before the day therein appointed for payment of such money shall neglect to pay the same, such company or body shall be deemed to have committed an Act of Bankruptcy on the fifteenth day after service of such order.

Manner of making a company Bankrupt by affidavit, &c.

VI.—And be it enacted, That if any creditor or creditors of any such company or body to such amount as is now by law requisite to support a commission shall file an affidavit or affidavits in any of her Majesty's superior Courts of Law at Dublin that such debt or debts is or are justly due to him or them respectively from the said company or body, and that such company or body, as he or they verily believe, is a commercial or trading company or body incorporated or associated as aforesaid (as the case may be), and shall sue out of the same court a writ against such incorporated company, or against any person duly authorized to be sued as the nominal defendant on behalf of such associated company or body, as the case may be, and serve a chief clerk or secretary or registrar of such incorporated or associated company or body, as the case may be, or (if there be no officer of such denomination) any director of the said company or body personally, with a copy of such writ, if such company or body shall not, within one calendar month after service of such copy, pay, secure, or compound for such debt or debts to the satisfaction of such creditor or creditors, or make it appear to the satisfaction of one of the judges of the court out of which such writ shall issue that it is the intention of such company to defend the action upon the merits and within one calendar month next after service of such copy cause an appearance or appearances to be entered to such action or actions in the proper court or courts in which the same shall have been brought, every such company or body shall be deemed to have committed an Act of Bankruptcy from the time of the service of such copy.

Assignee of company may bring actions, &c., Creditors may make claims.

VII.—And be it enacted, That it shall be lawful for the assignees of the estate and effects of any such company or body to maintain any action, suit, or other proceeding against any person or persons (whether a member or members of such company or body or not), to recover any debt or demand on behalf of the said company or body against such person or persons, and for any person or persons to prove or claim under the commission against such company or body such debt or demand as may be due to him or them (whether a member or members of such company or body or not) on the balance of accounts between him or them and the said company or body.

Member's share, no set off against Assignee's claim upon him as a debtor.

VIII.—Provided always, and be it enacted, That no claim or demand which any member of any such company or body may have in respect of his share of the capital or Joint Stock thereof, or of any dividends, interests, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off, either at Law or in Equity, against any demand which the assignees of the estate and effects of such company or body may have against such member on account of any other matter or thing whatsoever, but all proceedings in respect of such matter or thing may be carried on as if no claim or demand existed in respect of such capital or Joint Stock, or of any dividends, interest, profits or bonus payable or apportionable in respect thereof.

Creditor's right to sue forth, or make claim under Commission, not prejudiced by action, suit, &c., as herein,

nor right to bring action, &c., prejudiced by suing out Commission.

IX.—And be it enacted, That no action, suit or other proceeding by any creditor or creditors of any such company or body shall, so far as concerns or may be necessary for the recourse of such creditor or creditors against the person, property, or effects of any member or members thereof for the time being, or any former member or members thereof, be deemed to prejudice or in any manner affect the right of such creditor or creditors to sue out or prosecute a commission against such company or body, or his or their right to prove or claim, under any commission against such company or body, any debt or demand remaining unsatisfied; and that no such commission, or proof or proceeding thereunder, shall be deemed to prejudice or in any manner affect the right of any creditor or creditors of such company or body to institute or maintain any action, suit or other proceeding, so far as concerns or may be necessary for the recourse of such creditor or creditors against the person, property, or effects of any member or members thereof for the time being, or any former member or members thereof: Provided always, that nothing herein contained shall prevent remedy against co-partners; provided also, that no execution in respect of any debt or demand proveable under the commission against any such company or body adjudged Bankrupt shall be issued against the person, property, or effects of any member or members for the time being of such company or body, or any former member or members thereof, until after such debt or demand shall have been proved under such commission, nor shall any such execution be issued, after the appointment of a receiver in manner herein-after mentioned, without leave of the high Court of Chancery.

Laws of Bankruptcy applicable.

X.—And be it enacted, That the law and practice in Bankruptcy now in force in Ireland shall extend, so far as the same may be applicable to this act, and to Commissions in Bankruptcy issued by virtue of this act, and to all proceedings under such Commissions, save and except as may be otherwise directed by this act.

Directors must

XI.—And be it enacted, That it shall be lawful for the Commissioner file balance sheet and verify on oath.

authorized to act in the prosecution of a Commission of Bankruptcy against any such company or body, at any time after the advertisement of the Bankruptcy in the Dublin Gazette, to order that the persons who were at the date of such commission directors of such company or body, or such of them as such Commissioner in his discretion shall think fit, or if there be no directors then such members of the company as such Commissioner in his discretion shall think fit, shall prepare such balance sheet and accounts, and in such form as such Commissioner shall direct, and shall subscribe such balance sheet and accounts, and file the same in such court and deliver a copy thereof to the assignee ten days at least before the last examination under such commission; and such balance sheet and accounts, before such last examination, may be amended from time to time as occasion shall require and such Commissioner shall direct; and such persons shall make oath of the truth of such balance sheet and accounts whenever they shall be duly required so to do; and such Commissioner may from time to time make such allowance out of the estate of such company or body for the preparation of such balance sheet and accounts, and to such person or persons, as such Commissioner shall think fit.

Allowance for preparation thereof.

And must surrender, and submit to be examined, &c.

XII.—And be it enacted, That every such person ordered as aforesaid to prepare such balance sheet and accounts shall be under the like obligation to surrender to the Commissioner authorized to act in the prosecution of such commission, at the hour and upon the day allowed for finishing the last examination under such commission, and to sign and subscribe such surrender, and to submit to be examined before such Commissioner from time to time upon Oath, and to make a full and true discovery of the estate and effects of such company or body, and shall incur such danger or penalty for not surrendering, or for not signing or subscribing such surrender, or for not coming before the Commissioner, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of the Commissioner, or for refusing to sign or subscribe his examination, or for not delivering up at the last examination under such commission all such part of the estate of such company or body, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power, or for removing, concealing, or embezzling any part of such estate to the value of ten pounds or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud the creditors of such company or body, as is now by the law in force concerning Bankrupts provided as to a Bankrupt for not conforming to the like requisitions for the discovery of and in relation to the estate and effects of such Bankrupt.

Penalty for not conforming, &c.

Freedom from arrest.

XIII.—And be it enacted, That every such person so ordered as aforesaid to prepare such balance sheet and accounts shall have such freedom from arrest and imprisonment in coming to surrender to such commission, and such discharge if arrested in coming to surrender, as a Bankrupt now has or may have under a Commission of Bankruptcy against him; and such person or persons, if in prison, may be brought before such court by warrant in like manner as such Bankrupt now may.

Persons, whether members or not, may be summoned to give evidence as to trading, Act of Bankruptcy, &c.

XIV.—And be it enacted, That it shall be lawful for the Commissioner authorized to act in the prosecution of a Commission of Bankruptcy issued against any such company or body, before adjudication, to summon before such Commissioner any person (whether a member of such company or body or not) whom such Commissioner shall believe capable of giving any information concerning the commercial dealings or trading of, or any Act or Acts of Bankruptcy within the meaning of this act committed by, such company or body, and also to require such person so summoned to produce any books, papers, deeds, writings, and other documents in the custody, possession, or power of such person which may appear to such Commissioner to be necessary to establish such dealings, trading, or Act or Acts of Bankruptcy; and it shall be lawful for such Commissioner to examine every such person upon oath, by word of mouth or interrogatories in writing, concerning the dealings or trade of, or any Act or Acts of Bankruptcy within the

After adjudication—persons suspected to have property, &c. of company may be summoned.

meaning of this act committed by, such company or body; and it shall also be lawful for such Commissioner, after adjudication, to summon before him any person (whether a member of such company or body or not) known or suspected to have any of the estate of such company or body in his possession, or who is supposed to be indebted to such estate, or any person (whether a member of such company or body or not) whom such Commissioner believes capable of giving information concerning any person or persons who was or were a member or members of such company or body at or before the date of the commission, or concerning the trade, dealings, or estate of such company or body, or concerning any Act or Acts of Bankruptcy within the meaning of this act committed by such company or body, or any information material to the full disclosure of the dealings of such company or body; and it shall be lawful for such Commissioner to examine in manner aforesaid every such person so summoned concerning the person of any such member, or concerning the trade, dealings, or estate of such company or body, and also to require every such person so summoned to produce any books, papers, deeds, writings, or other documents in his custody, possession, or power which may appear to such Commissioner necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which such Commissioner is authorized to inquire into; and every such person so summoned shall incur such danger or penalty for not coming before the Commissioner, or for refusing to be sworn and examined, or for not fully answering to the satisfaction of such Commissioner, or for refusing to sign or subscribe his examination, or for refusing to produce or for not producing any such book, paper, deed, writing, or document, as is now provided against persons summoned to be examined under a Commission of Bankruptcy.

Costs where a member is summoned.

XV.—And be it enacted, That where any person who, at or before the date of a Commission of Bankruptcy issued against any such company or body, was a member of such company or body, shall be summoned to attend before the Commissioner authorized to act in the prosecution of such commission, every such person shall have such costs and charges only (if any) as such Commissioner in his discretion shall think fit.

Penalty on other members concealing—£100 and double value.

Premium for discovery.

XVI.—And be it enacted, That if any person who, at or before the date of the commission against any such company or body, was a member of such company or body, but not being a person so ordered as aforesaid to prepare such balance sheet and accounts, or if any other person, shall wilfully conceal any real or personal estate of any such company or body, and shall not within thirty days after the issuing of the commission against such company or body discover such estate to the Commissioner authorized to act in the prosecution of such commission, or to the assignees, every such person shall forfeit the sum of one hundred pounds, and double the value of the estate so concealed: and any person, other than a person having been a member of such company or body, who shall, after the time allowed for finishing the last examination under such commission, voluntarily discover to such Commissioner or the assignees any part of the estate of such company or body not before come to the knowledge of the assignees, shall be allowed five pounds *per Centum* thereupon, and such further reward as the major part in value of the creditors present at any meeting called for that purpose shall think fit, to be paid out of the estate recovered on such discovery.

Treasurer, solicitor, or agent, &c., to deliver up all monies, securities, &c., as per order of Commissioner.

XVII.—And be it enacted, That, after the adjudication of Bankruptcy under any commission already issued or hereafter to be issued shall have been advertized in the *Dublin Gazette*, it shall be lawful for the Commissioner authorized to act in the prosecution of such commission to order any treasurer or other officer, or any attorney or solicitor or other agent of the company or body, or person or persons, adjudged Bankrupt under such commission, to pay and deliver over to the assignee appointed under such commission, or to the Bank of *Ireland* or any of the branches thereof, according to the rules now or hereafter in force with respect to payments into the Bank of *Ireland* of monies due to any Bankrupt's estate, all monies or securities for money in his custody, possession, or power as such officer or agent, and which he is not by law entitled to retain as against the Bankrupt or Bankrupts, or his or their assignees.

Commissioner may commit to prison, for disobedience.

XVIII.—And it is hereby declared and enacted, That if any person shall disobey any rule or order of the Commissioner of Bankruptcy authorized to act in the prosecution of any Commission of Bankruptcy duly made by such Commissioner for enforcing any of the purposes and provisions of this act, or of any other act relating to Bankruptcy or Insolvency now or hereafter to be in force, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, it shall and may be lawful for such Commissioner, by warrant under hand and seal, to commit the person so offending to the Queen's prison, or to the common gaol of any county, city, or place where he shall be found or where he shall usually reside, there to remain without bail or mainprize until such person shall have fulfilled the duty required by such rule or order, or until such Commissioner or the Lord Chancellor shall make order to the contrary.

Assignees of comp. may petition Court of Chancery, in order to wind up.

XIX.—And be it enacted, That it shall be lawful for the Commissioner authorized to act in the prosecution of any such Commission of Bankruptcy to direct the creditors' assignees of the estate and effects of any such company or body to apply to the High Court of Chancery, by petition in a summary way to the Lord Chancellor or the Master of the Rolls, praying that all such orders and directions may be given as shall be necessary for the final winding up and settling the affairs of such company or body, and to compel a just contribution from all the Members of such company or body towards the full payment of all the debts and liabilities of such company or body, and of the costs of winding up and finally settling the affairs of such company or body; and that upon the hearing of such petition it shall be lawful for the said High Court of Chancery to refer it to one of the Masters of the High Court of Chancery to take all such accounts and make all such inquiries as shall be required, for the purpose of ascertaining what sum of money in the whole, and what sums of money as proportionate parts of the whole, or what sum or sums of money from time to time on account, will (having regard to the deed of settlement of such company, and the calls, contributions, debts, or demands actually paid by the several and respective members thereof, and also having regard to any proceedings before the Commissioner of Bankruptcy,) be necessary and proper to be raised, by calls or contributions from the respective members of such company or body, for the payment and satisfaction of all the debts and liabilities of such company or body, and also of all the costs of winding up and settling the affairs of the said company; and that the High Court of Chancery, upon confirmation of the Master's report made upon any such reference, or upon making such reference, or otherwise, may order the payment of the several and respective sums of money which by such report are found necessary and proper to be paid, and may refer it to the Master to appoint a receiver to collect and receive such sums of money, and either to pay the same into the Bank of *Ireland*, in the name and to the account of the Accountant General of the High Court of Chancery to the credit of such company or body, and may, upon the petition of such assignees order such sums of money to be paid in or towards satisfaction of the debts which by the proceedings in Bankruptcy shall have been found to be due to the creditors of such company or body, and all persons having claims and demands thereon, and also in satisfaction of costs, or may order such receiver to pay such sums of money in satisfaction of such debts, claims, and demands, and costs, in the first instance.

Reference to Master.

A Receiver.

Claims between members to be adjusted by Lord Chancellor.

XX.—And be it enacted, That if it shall appear that any individual members of such company or body have claims against each other in respect of the affairs or transactions of such company or body, it shall be lawful for the Court of Chancery, upon the petition of any member of such company or body, alleging that he hath any such claim against any other member of the said company or body, to make all such orders as shall be just for the purpose of finally settling and determining such claim, and may order the payment of such sum of money (if any) as shall appear to be due in respect of any such claim.

Rules and orders relative to contribution, to be made by Lord Chancellor and Master of the Rolls.

XXI.—'And whereas the law is defective in the means of making the 'members of joint stock companies contributaries for paying their debts 'in full, and in the means of giving relief where execution may have been 'had in respect of a debt due from any such company against one or a very 'few members of such company, and also in the means of adjusting the 'rights of the members of any such company amongst themselves, and 'finally winding up the affairs of such company:' Be it enacted, That it shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls, from time to time, and as often as circumstances shall require, to make and prescribe such rules and orders touching and concerning the form and mode of proceeding to be had and taken in the Court of Chancery for settling and enforcing the contribution to be paid by any member or members for the time being of any such company, or any former member or members thereof, or any real or personal representative, or other persons liable in that behalf, and the practice to be observed by such court in or relating to such proceeding, or any matters incident thereto, and the form and mode of proceeding to be had and taken before any one of the Masters of the said court, primarily or by reference from the said court, in any matter for or relating to contribution, as shall from time to time seem necessary and proper for the advancement of justice in such cases, and for adjusting and determining the rights and equities of the parties concerned, and for suing for and getting in the assets, and for ascertaining and discharging the liabilities of such companies, and requiring the creditors thereof to claim their debts, and finally winding up the affairs thereof, with as little delay, expense, and uncertainty as possible: provided always, that such rules and orders shall be laid before both Houses of Parliament within one month from the making thereof, if Parliament be then sitting, or, if Parliament be not then sitting, within one month from the commencement of the then next session of Parliament; and every rule and order so made shall be binding and obligatory and be of like force and effect as if the provisions contained therein had been expressly enacted by Parliament.

Act 41 Geo. 3, c. 90, U. K., to extend to decrees or orders relative hereto.

XXII.—And be it enacted, That an act passed in the forty-first year of the reign of King *George* the Third, intituled *An Act for the more speedy and effectual recovery of debts due to His Majesty, his heirs and successors, in right of the crown of the United Kingdom of* Great Britain *and* Ireland, *and for the better administration of justice within the same*, shall extend to decrees or orders made by the said Court of Chancery in any suit, proceeding, or matter under or by virtue of this act.

Balance sheet to be transmitted to Board of Trade, certifying cause of failure, &c.

XXIII.—And be it enacted, That, previous to passing the last examination under a commission against any such company or body adjudged Bankrupt, it shall be the duty of the Commissioner authorized to act in the prosecution of such commission, to inquire, by the examination of such person or persons as such Commissioner shall think fit, into the cause of the failure of such company or body; and after the passing of such last examination, or after the time allowed by such court for that purpose shall have elapsed, such court shall cause a copy of the balance sheet filed in the court under such commission to be transmitted to the committee of Privy Council for trade and plantations, and such Commissioner shall at the same time certify in writing to the said committee what, in the opinion of such Commissioner, was the cause of the failure of such company or body, and shall have liberty to state any special circumstances relating to the formation or management of the affairs of such company or body, and shall cause to be annexed to such certificate a copy of the examination of any person or persons taken under such commission, and which such Commissioner shall deem material, relating to the formation or management of the affairs of such company or body.

After certificate of cause of failure, crown may revoke privilege.

XXIV. And be it enacted, That after the Commissioner shall have certified to the committee of Privy Council for trade and plantations the cause of the failure of any such company or body adjudged Bankrupt, it shall and may be lawful for Her Majesty, her heirs and successors, upon the recommendation of the said committee, by any instrument in writing under her or their great seal of *Ireland*, to signify her or their pleasure for revoking and making void, and thereby to revoke and make void, all the powers, privileges, and advantages at any time by any charter or letters patent or Act of Parliament granted to such company or body, and to determine the same, and thereupon the said powers, privileges, and advantages shall accordingly be revoked, and the same company or body shall be determined, without any inquisition, scire facias, or any matter or thing to make void or determine the same, any thing in such charter or letters patent or Act of Parliament contained to the contrary notwithstanding.

Board of Trade may lay papers before Attorney General.

XXV.—And be it enacted, That after the Commissioner shall have certified to the committee of Privy Council for trade and plantations the cause of the failure of any such company or body adjudged Bankrupt, the said committee may whenever it shall think fit, cause all the papers relating to such failure, and to the formation and management of such company or body, and to the conduct of any of the directors or other officers of the said company or body therein, or to any or either of such matters, to be laid before Her Majesty's Attorney General for *Ireland*, who shall direct whether any and what proceedings shall be taken thereupon against any person who was a director or other officer of such company or body, or any other person; and any prosecution or other proceeding which shall be thereupon directed by the Attorney General for *Ireland* shall be conducted by or under the direction of the Commissioners of Her Majesty's treasury.

Prosecution by Attorney General to be under direction of Commissioners of Treasury.

Company and its officers deemed subsisting until determination by crown.

XXVI.—Provided always, and be it enacted, That until the determination of such company or body by Her Majesty, her heirs or successors, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting, and as continuing such officers as aforesaid, for all the purposes for which the same was originally constituted, and that, notwithstanding such determination as aforesaid, the same shall be considered as subsisting and continuing respectively so long and so far as may be necessary for the winding up of the concerns of such company or body under the commission issued against such company or body.

If otherwise determined, deemed subsisting until affairs settled.

XXVII.—And be it enacted, That notwithstanding the determination of any company or body incorporated or associated within the meaning of this Act, as the case may be, by any other means than as last aforesaid, such company or body, and the persons who were officers thereof at the time of such determination, shall respectively be considered as subsisting and as continuing such officers as aforesaid, for all the purposes of this Act, so long and so far as any matters relating to such company or body shall remain unsettled.

Destroying or falsifying books, &c.

XXVIII.—And be it enacted, That if any person, being a member of any such company or body which shall be adjudged Bankrupt shall, after and with the knowledge of an act of Bankruptcy within the meaning of this Act committed by such company or body, or in contemplation of the Bankruptcy of such company or body, have destroyed, altered, mutilated, or falsified any of the books, papers, writings, or securities of such company or body, or made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud the Creditors of such company or body, or to defeat the object of this or any other statute relating to Bankrupts, every such person shall be deemed to be guilty of a misdemeanor, and, being convicted thereof, shall be liable to be imprisoned in any common gaol or house of correction for any term not exceeding three years, with or without hard labour.

Making false entries, &c., a misdemeanor.

If company exist in both England and Ireland, to be deemed English or Irish, according to where Head Office last had been.

XXIX.—'And whereas an Act was passed in the last session of Parliament, 'intituled *An Act for facilitating the winding up of Joint Stock Companies* '*unable to meet their pecuniary engagements*, the provisions whereof are appli- 'cable to companies carrying on business in *England*: And whereas several 'Joint Stock Companies already have and other Joint Stock Companies may 'hereafter have establishments, and have carried on or may carry on business, 'both in *England* and *Ireland;*' be it therefore enacted, That in all cases in which any such Joint Stock Company as in this Act and the said recited Act respectively is specified, and made subject to the provisions thereof, shall have had or hereafter shall have an establishment or establishments, or shall have carried on or hereafter shall carry on business, both in *England* and *Ireland*, if the head office of such company be or shall last have been in *England* such company shall be deemed to be an *English* company, and within and subject to the provisions of the said recited Act, and not of this Act, and if the head office be or shall last have been in *Ireland* such company shall be deemed to be an *Irish* company, and within and subject to the provisions of this Act, and not of the said recited Act.

Construction clause.

XXX.—And be it enacted, That in construing this Act all powers given or duties directed to be performed by the Lord Chancellor may be performed by the Lord Keeper or Lords Commissioners of the Great Seal of *Ireland;* and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and bodies corporate as well as individuals; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; unless (in the cases above specified) a different construction shall be provided, or the construction be repugnant to the subject matter or context.

To extend to Ireland only.

XXXI.—And be it enacted, That this Act shall extend only to *Ireland*, except where there is any special provision to the contrary.

Commencement.

XXXII.—And be it enacted, That this Act shall commence and take effect on the first day of *November* next.

Alteration or repeal.

XXXIII.—And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

Schedule to which the foregoing Act refers.

Schedule (A.)—No. 1.

Declaration of Insolvency by incorporated or associated Commercial or Trading Company.

By virtue of a resolution duly passed in that behalf on the Day of at a Board of Directors of [*here state the name or style of the company*], duly summoned for that purpose, it is hereby declared, that the said company [*or* Society, *&c., as the case may be,*] is unable to meet its engagements.

Dated this Day of in the Year

[*Common seal of the company, or, if the company have no common seal, the signature of the Chairman of the Board of Directors who was present at the passing of the resolution.*]

Witness *G. H.*, Attorney [*or* Solicitor] of the Court of and attorney [*or* solicitor] of the said company, and attesting witness to the execution hereof as such attorney [*or* solicitor.]

Schedule (A.)—No. 2.

* *Sic.*

Minute of resolution of Board of a Directors of incorporated or associated Commercial or Trading Company authorizing a declaration of insolvency.*

A resolution was duly passed on the Day of at a Board of Directors of [*here state the name or style of the company,*] duly summoned for that purpose, that the said company was then unable to meet its engagements, and that a declaration of insolvency should be forthwith filed in the office of the Lord Chancellor's Secretary of Bankrupts, in the form directed by the statute in that case made and provided.

[*Common seal of the company, or, if the company have no common seal, the signature of the Chairman of the Board of Directors who was present at the passing of the resolution.*]

Witness *G. H.*, attorney [*or* solicitor] of the court of and attorney [*or* solicitor] of the said company, and attesting witness to the execution hereof as such attorney [*or* solicitor].

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9 & 10 VIC. Cap. 27.

An Act to amend the Laws relating to Friendly Societies.

[*3rd July*, 1846.]

(*As far as relates to Bankrupts in Ireland.*)

When Trustee absent, or Bankrupt, &c.

Stock to be transferred by Registrar and Dividends paid.

XVII.—And be it enacted, That whenever it shall happen that every person in whose name any part of the several stocks, annuities, and funds transferable, or which hereafter shall be made transferable, at the Bank of *England*, or in the books of the governor and company of the Bank of *England*, is or shall be standing as a trustee of any such society, shall be out of *England*, *Ireland*, or *Scotland* respectively, or shall be Bankrupt, Insolvent, or Lunatic, or it shall be unknown whether such trustee is living or dead, it shall be lawful for the registrar of Friendly Societies in *England*, *Ireland*, or *Scotland* respectively, to direct that the accountant general, secretary, or deputy secretary, or other proper officer for the time being, of the governor and company of the Bank of *England*, do transfer in the books of the said company, such stock, annuities, or funds standing as aforesaid, to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid, the dividends of such stock, annuities, or funds; and whenever it shall happen that one or more only, and not all or both, of such trustees as aforesaid shall be so absent, or a Bankrupt, Insolvent, or Lunatic, or it be unknown whether one or more of such trustees be living or dead, it shall be lawful for the said registrar to direct that the other and others of such trustees, who shall be forthcoming and ready and qualified to act, do transfer such stock, annuities, or funds, to or into the name of such person as aforesaid, and also that such forthcoming trustee do also receive and pay over the dividends of such stock, annuities, or funds, as such society shall direct; and all such transfer and payments so made shall be valid and effectual to all intents and purposes whatsoever.

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9 & 10 VIC. Cap. 28.

An Act to facilitate the Dissolution of certain Railway Companies.

[*3rd July*, 1846.]

(*As far as relates to Bankrupts in Ireland.*)

Any Creditor qualified, or 3 of committee may petition for fiat.

XXVII.—And be it enacted, That it shall be lawful for any three of those who were of the committee of any company so dissolved, at any time after the dissolution thereof shall have been resolved, or for any creditor or creditors of such company to such amount as is now by law requisite to support a fiat in Bankruptcy in *England* and *Ireland*, or a sequestration in *Scotland*, within three months after the dissolution thereof shall have been resolved to petition, that a fiat in Bankruptcy may issue against such company, if in *England*, or *Ireland*, or that the estates of the company may be sequestrated if in *Scotland*.

When fiats issued, Companies subject to

XXVIII.—And be it enacted, That upon the production of a copy of the *London Gazette* containing the resolution of any such meeting as aforesaid, whereby it shall be resolved that the dissolution of the company shall be an Act of Bankruptcy, or upon the petition of any three of the committee as aforesaid, or of any creditor under the last preceding clause, a fiat in Bankruptcy shall issue against such company by the registered name or style of such company; and the company shall thereupon be deemed to be within the provisions of an Act passed in the 7th and 8th years of the reign of her present Majesty, intituled "*An Act for facilitating the winding up of Joint Stock Companies unable to meet their pecuniary engagements*," and of another Act passed in the 8th and 9th years of the reign of her present Majesty, intituled "*An Act to facilitate the winding up of Joint Stock Companies in* Ireland, *unable to meet their pecuniary engagements*," in all respects as if a fiat in Bankruptcy had issued against it under the said Act before its dissolution; but this provision not to extend to *Scotland*.

7 & 8 Vic. c. 111.

8 & 9 Vic. c. 98.

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10 VIC. Cap. 16.

An Act for consolidating in one Act certain provisions usually contained in Acts with respect to the constitution and regulation of bodies of Commissioners appointed for carrying on undertakings of a public nature.

[23*rd April*, 1847.]

(*As far as relates to Bankrupts in Ireland.*)

No Bankrupt or Insolvent to be a Commissioner.

VIII.—No Bankrupt or Insolvent, or person not qualified as required by the special Act, shall be capable of being or continuing a Commissioner.

Proof of debts in Bankruptcy.

CII.—And with respect to proof of debts in Bankruptcy or Insolvency, be it enacted, That if any person against whom the Commissioners have any claim or demand become Bankrupt, or take the benefit of any Act for the relief of Insolvent Debtors, the clerk or treasurer of the Commissioners in all proceedings against the estate of such Bankrupt or Insolvent, or under any fiat, sequestration, or Act of Insolvency against such Bankrupt or Insolvent may represent the Commissioners and act in their behalf in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the Commissioners.

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10 & 11 VIC. Cap. 85.

An Act for giving further facilities for the transmission of letters by Post, and for the regulating the duties of Postage thereon and for other purposes relating to the Post-office.

[22*nd July*, 1847.]

(*As far as relates to Bankrupts in Ireland.*)

Commissioners under any fiat of Bankruptcy may order letters addressed to the Bankrupt to be re-directed or delivered to the Official Assignee.

XI.—And be it enacted, That it shall be lawful for any Commissioner of Bankrupts, or any Court of Bankruptcy acting under any fiat or Commission of Bankruptcy in *England* or *Ireland* to order that for a period not exceeding three calendar months from the date of any such order all post letters directed or addressed to any Bankrupt at the place of which he shall be described in the fiat or Commission awarded or issued against him, shall be re-directed, re-addressed, sent or delivered by the Post-master General or the officers acting under him, to the official or other assignee or other person named in such order; and that upon notice of any such order to be given to the Post-master General or the officers acting under him by the official or other assignee, or other person named in such order, of the making of such order, it shall be lawful for the Post-master General or such officers as aforesaid in *England* or *Ireland*, to re-address, re-direct, send or deliver all such post letters to the official or other assignee or other person named in such order accordingly, and such Commissioner or Court of Bankruptcy may, upon any application to be made for that purpose, renew any such order for a like or any other less period as often as may be necessary.

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11 & 12 VIC. CAP. 45.

An Act to amend the Acts for facilitating the winding up the affairs of Joint-Stock Companies unable to meet their pecuniary engagements, and also to facilitate the dissolution and winding up of Joint-Stock Companies and other partnerships.

[14*th August*, 1848.]

Interpretation clause.

III.—(*Part of.*) The word "fiat" shall extend to, and shall include any Commission of Bankruptcy which shall be issued in *Ireland*, and the words "Court of Bankruptcy" shall extend to, and shall include, any Commissioner acting in the prosecution of any such Commission of Bankrupt in Ireland, and the Lord Chancellor of Ireland sitting in Bankruptcy.

The petition, and proceedings thereon. Who may petition.

V.—And be it enacted, That it shall be lawful for any person who shall be or claim to be a contributory of a company to present a petition to the Lord Chancellor or to the Master of the Rolls in a summary way for the dissolution and winding up, or for the winding up of the affairs of such Company in any of the following cases; that is to say—

1. If any Company shall have committed, done or suffered any act which, according to the provisions of the said recited Acts, or of any of them, would be deemed to be an Act of Bankruptcy on the part of such Company.

No petition after fiat, but under direction of Court of Bankruptcy.

VI.—And be it enacted, That in case any fiat shall have been issued against any Company under the provisions of the said recited Acts, or any of them, no petition shall be presented for the dissolution and winding up, or for the winding up of such company under this Act, by any other person than by the creditors' assignees of the estates and effects of any such company, who shall have power by order and direction of the Court of Bankruptcy (but not otherwise) to present a petition to the Lord Chancellor, or to the Master of the Rolls in *England* or *Ireland* as the case may be, for the winding up of such Company under this Act, and it shall be a sufficient ground for such petition that such order has been made by the Court of Bankruptcy; and that upon an order for the winding up of such company being pronounced by the Court of Chancery, the Court of Bankruptcy shall cause to be made upon the proceedings under the fiat a memorandum of such order as aforesaid of the Court of Bankruptcy, and shall order that the said proceedings shall be, and the same shall accordingly be deposited with the Master to whom the matter shall be referred by the Court of Chancery under this Act; provided nevertheless that it shall be lawful for the Master to dispense with such deposit, and to make order concerning the custody and production of such proceedings.

Proceedings in Bankruptcy to be conclusive.

VII.—And be it enacted, That all proceedings had accounts taken and other matters done in the prosecution of any fiat before any order absolute under this Act, shall for the purposes of any winding up under this Act, be as valid and conclusive as the same would have been valid and conclusive under the said fiat, and any pending proceedings, accounts and matters under any such fiat may be proceeded with and concluded under this Act.

When order made on petition by direction of the Court of Bankruptcy, all estate, &c. of Assignees to vest in Official Manager.

XXX.—And be it enacted, That when any order shall have been made as herein-before mentioned, on petition, by direction of the Court of Bankruptcy for winding under this Act the affairs of any company, all such estate and effects, rights and credits of the Bankrupt Company as shall for the time being be vested in the assignees in Bankruptcy, shall, upon and by virtue of the appointment of an official manager under this Act, unless otherwise provided by the order absolute, become absolutely vested in such official manager, together with all such powers in and about the same, as an official manager might exercise in any matter originally instituted under this Act, in which the Company had not become Bankrupt.

Provision as to General Orders to apply to Ireland.

CXXIV.—And be it enacted, That the provision in this Act contained for the making and laying before Parliament General Orders and Rules for the purposes of this Act by the Lord Chancellor of *Great Britain*, with such advice and assistance as herein-before mentioned, shall, in all respects, apply to any Rules and Orders to be made by the Lord Chancellor of *Ireland*, with the advice and assistance of the Master of the Rolls in *Ireland*, for the purposes of this Act in *Ireland*, such Rules and Orders to be laid before Parliament in like manner as any Rules and Orders by the Lord Chancellor of *Great Britain*.

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11 & 12 VIC. Cap. 48.

An Act to facilitate the Sale of Incumbered Estates in Ireland.

[14*th August*, 1848.]

(As far as relates to Bankrupts in Ireland.)

No petition for sale by Assignees of Bankrupts or Insolvents, without consent of major part of Creditors.

LXXI.—And be it enacted, That no petition shall be presented for confirming and carrying into execution a contract for sale, or for a sale by order of the Court under this Act, by any assignee of any Bankrupt or Insolvent Debtor, without the consent thereto of the major part in number and value of the creditors assembled at a meeting duly convened for that purpose, first had and obtained. Provided nevertheless, that where any such petition shall have been presented without such consent having been first had and obtained, such consent may, by leave of the Court, be given subsequently so as to render valid the proceedings under such petition.

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12 & 13 VIC. Cap. 95.

An Act to amend the Law concerning judgments in Ireland.

[1*st August*, 1849.]

9 G. 2. (I.)

25 G. 2. (I.)

I.—Whereas an Act of the Parliament of *Ireland* was passed in the ninth year of King *George* the Second, intituled 'An act for the more effectual assigning of judgments, and for the more speedy recovery of rents by distress;' and an act of the parliament of *Ireland* was passed in the twenty-fifth year of King *George* the Second, intituled, "An Act to explain and amend an Act passed in the ninth year of the reign of his present Majesty, intituled 'An Act for the more effectual assignment of judgments, and for the more 'speedy recovery of rents by distress,' so far as the said Act relates to the assignment of judgments and statutes, and to prevent great inconveniences that frequently happen to the suitors of the Court of Chancery by the death or removal of a six clerk or six clerks of the said court, and to enable grand juries to make presentments for the clerks of the crown and peace:" And whereas by an Act passed in the sixth year of the reign of his late Majesty King *William* the Fourth, intituled "An Act for facilitating the appointment of sheriffs in *Ireland*, and the more effectual audit and passing of their accounts; and for the more speedy return and recovery of fines, fees, forfeitures, recognizances, penalties, and deodands; and to abolish certain offices in the Court of Exchequer in *Ireland;* and to amend the laws relating to grants in custodiam and recovery of debts in *Ireland;* and to amend an Act of the second and third years of his present Majesty, for transferring the powers and duties of the Commissioners of public accounts in *Ireland* to the Commissioners for auditing the public accounts of *Great Britain*," it was enacted, That it should be lawful for any person entitled to sue out or who had already sued out a Writ of Elegit upon any Judgment recovered in any of his Majesty's Courts at *Dublin*, or to issue or who had issued execution in any suit or proceeding on any recognizance there, to apply by petition to the Court of Chancery, or to the Court of Exchequer at the equity side thereof, for an order that a receiver might be appointed of the rents and profits of the entire, and not of a moiety only, of all lands, tenements, or hereditaments which he would be entitled to have extended or appraised under a Writ of Elegit, or extended, seized, or taken under a writ of levari facias, or other proceeding on such recognizance, or to have a receiver thereof appointed by that Court extended to that matter, and it should be lawful for the Court to appoint or extend a receiver accordingly over the whole thereof, or over so much thereof as should appear to it sufficient for the purposes of paying the sum due on such Judgment or recognizance: And whereas by an Act passed in the fourth year of her Majesty's reign, intituled "An Act for abolishing arrest on Mesne Process in Civil Actions, except in certain cases, for extending the remedies of Creditors against the property of debtors, and for the further amendment of the law and the better advancement of justice in *Ireland*," it was enacted, that it should be lawful for the sheriff or other officer to whom any Writ of Elegit, or any precept in pursuance thereof, should be directed at the suit of any person upon any Judgment which at the time appointed for the commencement of that Act should have been recovered, or should be thereafter recovered in any action in any of her Majesty's superior Courts at *Dublin*, to make and deliver execution unto the party in that behalf suing of all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments which might be of copyhold tenure, as the person against whom execution was so sued, or any person in trust for him, should have been seised or possessed of at the time of entering up the said Judgment, or at any time afterwards, or over which such person should at the time of entering up such Judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, in like manner as the sheriff or other officer might then make and deliver execution of one moiety of the lands and tenements of any person against whom a Writ of Elegit was sued out, which lands, tenements, rectories, tithes, rents, and hereditaments by force and virtue of such execution should accordingly be held and enjoyed by the party to whom such execution should be so made and delivered, subject to such account in the Court out of which such execution should have been sued out as a tenant by Elegit was then subject to in a Court of Equity; and it was enacted, that it should be lawful for any person entitled to sue out or who had already sued out a Writ of Elegit upon any Judgment recovered in any of her Majesty's Courts at *Dublin*, or to issue or who had issued execution in any suit or proceeding on any recognizance there, to apply by petition to the Court of Chancery, or to the Court of Exchequer at the Equity side thereof, for an order that a receiver might be appointed over any lands, tenements, rectories, tithes, annuities, rents, or hereditaments by

5 & 6 W. 4, c. 55.

3 & 4 Vic. c. 105.

that Act made liable to be seized, extended, appraised, or taken in execution on any such Judgment, or to order that any receiver appointed before the passing of that Act over the property of any Judgment Debtor might be extended to the matter of such new petition, and that in proceeding under the said Act of the sixth year of King *William* the Fourth and the Act now in recital the said Court of Chancery and Court of Exchequer at the Equity side thereof should have power to appoint or extend a receiver in a summary way, on a petition at the instance of such person, over any property of such Judgment Debtor which such Creditor would or could make available for the payment of his Judgment Debt by filing (after a writ of execution had been issued and returned at law upon such Judgment) a bill in a Court of Equity, or by any writ of execution at law, or (subject to the proviso therein-after contained) by petition under the provisions of the Act now in recital, and it should be lawful for the said Courts respectively to appoint or extend a receiver accordingly over the whole thereof, or over so much thereof as should appear to be sufficient for the purposes of paying the sum due on such Judgment or recognizance; and it was enacted, that a Judgment already entered up or to be thereafter entered up against any person in any of her Majesty's superior Courts at *Dublin* should operate as a charge upon all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments, including lands and hereditaments of copyhold tenure, of or to which such person should at the time of entering up such Judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever at Law or in Equity, whether in possession, reversion, remainder, or expectancy, or over which such person should at the time of entering up such Judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, and should be binding as against the person against whom Judgment should be so entered up, and against all persons claiming under him after such Judgment, and should also be binding as against the issue of his body, and all other persons whom he might without the assent of any other person cut off and debar from any remainder, reversion, or other interest in or out of any of the said lands, tenements, rectories, advowsons, tithes, rents, and hereditaments, and that every Judgment Creditor should have such and the same remedies in a Court of Equity against the hereditaments so charged by virtue of that Act or any part thereof as he would be entitled to in case the person against whom such Judgment should have been so entered up had power to charge the same hereditaments, and had by writing under his hand agreed to charge the same with the amount of such Judgment Debt and interest thereon, subject to the provisoes in such Act contained; and by the lastly-recited Act the effect of Judgments in the superior Courts of common law was given to certain decrees, orders, and rules for payments of monies, costs, charges, and expenses: And whereas it is expedient to amend the law concerning Judgments in Ireland: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act all the provisions of the said Acts of the ninth and twenty-fifth years of King *George* the Second relating to Judgments, statutes staple, and statutes merchant, shall be repealed, save so far as respects Judgments entered up before the passing of this Act.

Repeal (in part) of recited Acts of 9 G. 2. (I.) and 25 G. 2. (I.) save as to certain Judgments.

Recited provisions of 5 & 6 Wm. 4, c. 55, and 3 & 4 Vic. c. 105, not to extend to Judgments, Decrees, Orders, or Rules for sums not exceeding £150.

II.—And be it enacted, That from and after the passing of this Act the provisions herein-before recited of the said Acts of the sixth year of King *William* the Fourth and the fourth year of her Majesty shall not in anywise extend or be applicable to any Judgment entered up after the passing of this Act in respect of any sum then actually due for principal and interest (exclusively of costs, and over and above all just and fair allowance), not exceeding the sum of one hundred and fifty pounds, save only such Judgments as shall be entered up before the thirty-first day of December one thousand eight hundred and forty-nine upon any warrant of attorney or cognovit actionem given before the passing of this Act, nor to any decree, order, or rule made after the passing of this Act where the whole amount therein ordered to be paid shall not exceed one hundred and fifty pounds; and the Judgments, decrees, orders, and rules respectively to which under this Act the provisions of the said Acts of the sixth year of King *William* the Fourth and the fourth year of her Majesty shall not extend or be applicable are herein-after respectively referred to as Judgments, decrees, orders, and rules subject to the provisions of this Act.

What lands may be delivered in execution on Judgments subject to the provisions of the Act.

III.—And be it enacted, That the sheriff or other officer to whom any Writ of Elegit, or any Precept in pursuance thereof, is directed at the suit of any person upon any Judgment subject to the provisions of this Act recovered in any action in any of her Majesty's superior courts at Dublin, shall make and deliver execution unto the party in that behalf suing of all such lands, tenements, rectories, tithes, rents, and hereditaments only (including lands and hereditaments which may be of copyhold tenure) as the person against whom execution is so sued, or any person in trust for him, is seised or possessed of at the time when such Writ of Elegit is delivered to the sheriff or other officer to be executed, or over which the person against whom execution is so sued has at the time when such Writ of Elegit is delivered as aforesaid any disposing power which he might without the assent of any other person exercise for his own benefit, which lands, tenements, rectories, tithes, rents, and hereditaments by force and virtue of such execution shall accordingly be held and enjoyed by the party to whom such execution shall be so made and delivered, subject to such account in the court out of which such execution shall have been sued out as a party to whom execution is made and delivered under the recited provision of the said Act of the fourth year of her Majesty is made subject to under such provision.

Rights of Judgment Creditor in Equity.

IV.—And be it enacted, that any creditor under a Judgment subject to the provisions of this Act on which a Writ of Elegit has been sued out shall have the same rights and remedies in Equity, upon and in respect of such lands, tenements, and hereditaments as might under this Act be delivered in execution under such Elegit, as such creditor might have had in respect of the lands, tenements, and hereditaments, or moiety of lands, tenements, and hereditaments, which might have been delivered in execution under a Writ of Elegit in case the recited provisions of the said Acts of the sixth year of king *William* the Fourth and of the fourth year of her Majesty had not been enacted.

Rights of Judgment Creditor in administration of Assets.

V.—And be it enacted, That in the administration in Courts of Equity of the assets of any person against whom any Judgment subject to the provisions of this Act may be recovered who shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, the Judgment Creditor shall under such Judgment have the same rights upon and in respect of such lands, tenements, or hereditaments as if this Act had not been passed.

Voluntary Conveyances after Judgment entered up void as against the Creditor.
10 Car. 1. st. 2. c. 3. (I.)

VI.—Provided always, and be it enacted, That every conveyance and other act whatsoever of and concerning lands, tenements, or hereditaments which under an Act of the Parliament of *Ireland* passed in the tenth year of King *Charles* the First, intituled "An Act against covenous and fraudulent Conveyances," would be deemed void against purchasers for money or other good consideration, shall be void as against any Judgment Creditor whose Judgment shall have been entered up before such conveyance or other act, and the like execution and other remedies may be had under such Judgment in respect of such lands, tenements, and hereditaments as if such conveyance or other act had not been made or done: Provided also, that nothing herein contained shall in anywise affect the provisions of the same Act concerning conveyances and other acts had or made to the intent to delay, hinder, or defraud creditors.

Decrees, Orders, and Rules to have the same effect as Judgments.

VII.—And be it enacted, That all Decrees and Orders of the Court of Chancery, and of the Court of Exchequer at the Equity side thereof, and all Rules of any of the Superior Courts of Common Law, and all Orders of the Lord Chancellor or Master of the Rolls or of the Court of Commissioners of Bankruptcy, and all Orders of the Lord Chancellor in matters of Lunacy, to which the effect of Judgments in the Superior Courts of Common Law was given by the said Act of the fourth year of her Majesty, shall, where the same respectively shall be Decrees, Orders, and Rules subject to the provisions of this Act, have the effect of Judgments subject to the provisions of this Act recovered in the Superior Courts of Common Law, and the persons to whom any monies, costs, charges, and expenses are by such Decrees, Orders, and Rules respectively directed to be paid shall have the remedies to which Judgment Creditors under such Judgments will have and be entitled to.

Judgments of Inferior Courts removed to have no further force than Judgments of Superior Courts.

VIII.—And be it enacted, That any Judgment, Rule, or Order subject to the provisions of this Act (or which would be so subject if the same were a Judgment, Rule, or Order of one of the Superior Courts of Common Law,) obtained in or made by any Inferior Court of Record which shall, under the provisions of the said Act of the fourth year of her Majesty, be removed into any of her Majesty's Superior Courts of Record at *Dublin*, shall have no further force or effect than a Judgment, Rule, or Order subject to the provisions of this Act recovered in or made by such Superior Court; but, save as aforesaid, any Judgment, Rule, or Order so removed shall be subject to the provisions of the said Act of the fourth year of her Majesty in relation to Judgments, Rules, or Orders removed into any of such Superior Courts.

New Writs to be framed.

IX.—And be it enacted, That such new or altered Writs shall be sued out of the Courts of Law and Equity and Court of Commissioners of Bankrupt as may by such Courts respectively be deemed necessary or expedient for giving effect to the provisions herein-before contained, and in such forms as the judges of such courts respectively shall from time to time think fit to order, and the execution of such Writs shall be enforced in such and the same manner as the execution of writs of execution is now enforced, or as near thereto as the circumstances of the cases will admit, and that any existing writ the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this act.

A Receiver not to be appointed or extended until after the expiration of a year.

X.—And be it enacted, That no person shall be entitled, in respect of any Judgment, Recognizance, Decree, Order, or Rule whatever, entered up, enrolled, or made after the passing of this Act, to apply, under the provisions of the said Acts of the sixth year of King *William* the Fourth and the fourth year of Her Majesty, or either of such Acts, to the Court of Chancery or to the Court of Exchequer at the Equity side thereof, for an Order that a Receiver may be appointed over any lands, tenements, rectories, tithes, annuities, rents, or hereditaments, or to have a Receiver thereof previously appointed extended to the matter of such application, until after the expiration of one year from the time of the entering up of such Judgment, the enrolment of such recognizance, or the making of such Decree, Order, or Rule; and that where any Receiver is appointed or extended in respect of any Judgment, Recognizance, Decree, Order, or Rule entered up, enrolled, or made after the passing of this Act, the costs incurred by the person at whose instance such Receiver is appointed or extended in procuring such appointment or extension shall, notwithstanding the provisions of the said Act of the sixth year of King *William* the Fourth, be in every case paid in the same priority only as the debt or sum secured by the Judgment, Recognisance, Decree, Order, or Rule in respect of which such appointment or extension was made.

Costs of appointment of Receiver to be paid in same priority as the debt.

Court may direct substituted service under scire facias.

XI.—And be it enacted, That where any writ of scire facias is issued to revive any Judgment entered up after the passing of this Act, or for obtaining execution on any such Judgment, if any person required to be summoned under such writ be out of the jurisdiction of the court in which such Judgment has been recovered, it shall be lawful for such court, on the application of the party prosecuting such writ, to direct service of notice of such writ on any agent of the person required to be summoned as aforesaid, or notice of such writ to be otherwise served or given as the court may think fit, instead of actual summons of such person under such writ; and after such substituted notice shall have been so served or given, and after the expiration of such time as the court may limit in this behalf, the like proceedings may be had as if the person required to be summoned had been duly summoned, and the return of such writ had been made accordingly.

XII.—And be it enacted, That this Act may be amended or repealed in this present session of Parliament. Act may be amended, &c.

* * *

GENERAL SUBSTANCE
OF THE OLD ORDERS IN BANKRUPTCY,
ABOLISHED IN 1843.

On the 27th of March, 1843, The Lord Chancellor (Sir E. Sugden) with the assistance of the Master of the Rolls (Right Honorable Francis Blackburne), framed two hundred and three General Orders in *Chancery*, by consolidating selecting and amending, and abolishing all other previous Orders; and on the same day The Lord Chancellor did the like as to General Orders in *Lunacy*; and on the same day the like as to General Orders in *Bankruptcy*, all of which were to commence and take effect on the 15th of April, 1843.

The following abstract gives their substance:—

By Lord Redesdale, C. [24th Jan., 1806.]

Consent to supersede must be after final examination.

Rule by Lord Manners, C. [20th April, 1819.]

Commission to be prosecuted or effectually proceeded on within fourteen days or twenty-one days, &c., or else superseded.—Messengers to be saved harmless.

By Sir Anthony Hart, C. [1st Nov. 1828.]

If Commission not ordered within four days after docket struck, another may strike a new docket.—Fee for inspection of docket book, one shilling.—Dockets more than two months struck, expired and of no effect.

By Lord Plunket, C. [26th Nov., 1832.]

1. In Joint Commissions, separate debts, how proveable. Allowance to Bankrupt; separate creditors may assent or dissent.—2. In Joint Commissions distinct accounts of joint and separate estates.—Their application. The overplus how disposed of. (*Both copied into Rule* 5 *of* 1843.)—3. Assignee, becoming Bankrupt, removed. On death or Bankruptcy thereof, notice to be given in Gazette, &c., when and where choice of new to be made.—4. When chosen, all proper parties to join in assignment of estate.—5. Assignee becoming Bankrupt, Commissioners to take account of the estate and effects of the Bankrupt as came to the hands of the assignee.—6. All specie, books, papers, &c., delivered over to new assignee. (*All copied into Rule* 6 *of* 1843.)—7. Upon application of person claiming to be mortgagee, inquiry to be made. Account taken of principal, interest, and costs, &c., and notice of sale in Gazette.—8. All proper parties shall join

in conveyance to purchaser.—9. Provision as to proceeds of sale.—10. If insufficient, mortgagee may prove for deficiency, but not disturb dividends made.—(*All copied into Rule* 7 *of* 1843.)—11. That all parties be examined upon interrogatories or otherwise, and produce upon oath all books, papers, &c.

By Lord PLUNKET. [2nd July, 1836.]

1. That the messengers and secretaries shall continue to receive the usual fees, &c. (*Copied into Rule* 8 *of* 1843.)

By Lord PLUNKET. [5th Nov. 1836.]

1. That the Registrar do assist in taxation. (*Copied into Rule* 9 *of* 1843.)—2. The agent of the assignee to be agent of Commission. Provision as to subsisting Commissions. (*Copied into Rule* 10 *of* 1843.)

* * *

SIR E. SUGDEN'S

GENERAL RULES AND ORDERS IN BANKRUPTCY.

Dated 27th day of March, 1843.

All other Orders abolished

from 15 Ap. 1843.

It is ordered by the Right Honorable the LORD CHANCELLOR, that the following shall be the General Orders in Bankruptcy; and that all others shall be considered to be abolished; that all former Orders which are hereinafter simply repeated, shall continue to operate as if they had not been disturbed; and that all variations of such Orders, and all new Orders, shall take effect as to all matters now depending or hereafter to be commenced, from the 15th day of April, 1843:—

Consent to supersede must be after final examination.

I.—That no Commission of Bankrupt shall be superseded upon the consent of creditors, unless the Bankrupt and the witness to such consent, shall make oath, that the respective signatures thereto were obtained subsequent to the time of the final examination of the Bankrupt; and that the Commissioner shall not certify the proceedings for the purpose of having any commission superseded, until after the Bankrupt in such matter shall have finished his examination, and until such consent, as aforesaid, shall be exhibited to him.

Commission transmitted to Registrars

proceeded on within 8 days,

II.—That every Commission of Bankrupt which shall be sued out, shall be immediately transmitted by the secretary of Bankrupts to the registrars of the Bankruptcy Court, to be by them forthwith laid before the Commissioners; and if not prosecuted or effectually proceeded on to an adjudication, within eight days after the date of such Commission, if against a person residing in Dublin or within twenty miles of the castle thereof, or within or 14 days, otherwise sent back to Secretary, and superseded at expense of Petitioning Creditor.

Costs payable by attorney, recoverable by same.

fourteen days after the date of such Commission, if against a person resident any greater distance from the Castle of Dublin, that the same shall, at the expiration of said times respectively, be sent back by the Commissioner to the office of the Secretary of Bankrupts, with a certificate endorsed thereon, under the hand of the Commissioners, or one of them, that the same had not been effectually proceeded on; whereupon said Commission shall be superseded at the expense of the person or persons who sued out the same, without further notice; unless satisfactory reason, on oath, be laid before the Commissioner, for extending the time—such extended time in no case to exceed fifteen days for such Dublin, and twenty-one days for country Commissions; and that the costs of such supersedeas be paid, in the first instance, by the solicitor or attorney who sued out such Commission, who shall have power to recover the same against his client.

Messenger saved harmless.

III.—That in all cases the petitioning creditor is bound to save harmless the messengers, in any action brought against them for the purpose of trying the validity of the Commission.

Commission not ordered for 4 days; other may strike docket, &c.

Precedence how granted.

Docket over 14 days struck, &c., how void.

IV.—That in case any person shall strike a docket, and shall not, within four days after such docket shall be struck, order a Commission to be sealed accordingly, then any other person may be at liberty to strike a new docket and sue out a Commission, without any notice to the person who struck such former docket; but that the Secretary of Bankrupts do not allow the above precedence to any solicitor who shall have struck a docket whereon to ground a Commission of Bankruptcy, to the exclusion of any other person willing both to strike a docket and to issue a Commission forthwith against the same party; and that no docket shall be considered as struck, until the same be entered in the docket book, to which docket book all persons may have access upon payment of the fee of one shilling; and that all dockets which shall have been struck more than fourteen days without a Commission having been bespoken within that time, be considered as expired and of no effect for the purpose of issuing a Commission thereon; and that the same be accordingly struck out of the docket book.

Joint Commissions.

Separate debts.

Creditor's assent to certificate.

Distinct accounts.

Joint and separate estates.

How administered.

V.—That the Commissioners, in a joint Commission against two or more Bankrupts, shall be at liberty at any meeting or meetings for the proof of debts under such Commission, to admit the proof of any separate debt or separate debts, of any one or more of such Bankrupts under such joint Commission; and such separate creditors shall be at liberty to assent to or dissent from the allowance of the certificate of the Bankrupt or Bankrupts, of whom they shall be separate creditors; and that the Commissioners do cause distinct accounts to be kept of the joint estate, and also of such separate estate or estates; and that what shall be found to belong to the separate estate or estates, shall be applied in the first place in and towards satisfaction of the debts of the respective separate creditors; and in case there shall be any overplus of the joint estate after all the joint creditors shall be paid and satisfied their whole demands, that the share or shares, interest or interests of the Bankrupt or Bankrupts whose separate estate or estates is or are to be applied in manner before directed, in such overplus, be carried to the account of his or their separate estate or estates, and be applied in or towards satisfaction of his or their seperate debts; and in case there shall be any overplus of the separate estate or estates of such Bankrupt or Bankrupts, after all their separate creditors shall be paid and satisfied their whole demands, that the overplus of such separate estate or estates be carried to the account of the joint estate, and be applied in or towards satisfaction of the joint debts; and that the costs of taking such accounts be paid out of such separate estate or estates, and be settled by the Commissioners in case the parties differ about the same.

VI.—That in case an assignee or assignees of any Bankrupt or Bankrupts, shall become Bankrupt, such Bankrupt assignee or assignees shall be removed, and shall be no longer an assignee or assignees of the estate or effects of the said Bankrupt or Bankrupts; and that upon the death or Bankruptcy which shall from henceforth happen, of any assignee or assignees, upon application made to the Commissioners, or either of them, and signed by one or more of the creditors who have or hath proved a debt or debts under the said Commission, and who is or are entitled to vote in the choice of assignees, the Commissioners, or either of them, shall cause due notice to be given in the Dublin Gazette, and in such other public papers as they shall think fit, of the time and place when and where they shall proceed to the choice of a new assignee or assignees, in the room and stead of the said deceased or bankrupt assignee or assignees; and that the creditors who shall be present at such meeting, and who are entitled to vote in the choice of assignees, and any person or persons duly authorized by any such creditor or creditors not present at such meeting, do then and there proceed to such choice accordingly. And that when the assignee or assignees of any Bankrupt or Bankrupts shall have become a Bankrupt, the Commissioners, or either of them, do proceed to take an account of the estate or effects of the Bankrupt or Bankrupts which have come to the hands of the assignee or assignees who shall so have become Bankrupt, and of his or their assignee or assignees, or to the hands of any other person or persons, by their or any of their order, or for their or any of their use, in the taking of which account, the Commissioners are to make all parties all just allowances; and that such parts of the estate or effects of the Bankrupt or Bankrupts whose assignee or assignees shall have so become Bankrupt, as shall be then remaining in specie, and also, all books, papers and writings in the custody or power of the said Bankrupt, assignee or assignees, or of his assignee or assignees, relating to the said Bankrupt or Bankrupts, or his or their estate or effects, be delivered over to the new assignee or assignees (if any such shall have been chosen), and to the solvent assignee or assignees (if any such there be), or to the solvent assignee or assignees, if no new assignee or assignees shall have been then chosen; and that such new assignee or assignees (if any such shall have been then chosen), and the solvent assignee or assignees (if any such there be), or the solvent assignee or assignees only, if such new assignee or assignees shall not have been chosen, be admitted creditors under the Commission or Commissions against such bankrupt assignee or assignees, for what shall be so found due from the estate or effects of such Bankrupt assignee or assignees; and for the better taking the account before directed, all parties are to be examined upon interrogatories, or otherwise, as the Commissioners, or either of them, shall think fit, and are to produce, upon oath, before such Commissioners or Commissioner, all books, papers and writings, in their, or any of their custody or power, relative to the said Bankrupt or Bankrupts, or his or their estate or effects, as such Commissioners or Commissioner shall direct.

Assignee becoming bankrupt removed, &c.

upon death or bankruptcy.

Notice in Gazette, &c.

of meeting for choice of another.

Account to be taken, &c.

All specie, books, papers, &c. of Assignee, when a bankrupt, delivered over.

Proof of debts against same.

VII.—That upon application to such Commissioners or Commissioner, by any person claiming to be a mortgagee or mortgagees of any part of the

Persons claiming to be mortgagees.

Enquiry by Commissioner.

Account taken, principal, interest, and costs, of rents and profits, &c., if in possession.

Notice of sale.

Proceeds thereof, how applied.

If insufficient, mortgagee may prove.

Dividends made, not disturbed.

Bankrupt's estate or effects, the said Commissioners, or either of them, shall proceed to inquire whether such person or persons is or are a mortgagee or mortgagees of any part of the Bankrupt's estate or effects; and if no sufficient objection shall appear to the title of such mortgagee or mortgagees to the sum claimed by him or them under such mortgage or mortgages, that the Commissioners or Commissioner do then proceed to take an account of the principal, interest, and costs due upon such mortgage or mortgages, and of the rents and profits of the mortgaged premises received by such mortgagee or mortgagees, or by any other person or persons by his, their, or any of their order, or for his, their, or any of their use, in case such mortgagee or mortgagees shall have been in possession of the mortgaged premises or of any part thereof; and that the Commissioners, or either of them, do then cause due notice to be given in such of the public papers as they, or either of them, shall think fit, when and where the said mortgaged premises are to be sold before them or either of them, or by public auction, or any other place or places, if they or either of them shall so think fit, and that such sale be made accordingly. That the monies to arise from such sale be applied, in the first place, in payment of the expenses attending such sale, and then in payment and satisfaction of what shall be found due to such mortgagee or mortgagees for principal, interest and costs, and that the surplus of the said mones (if any) be paid to the assignees of the estate and effects of the said Bankrupt; but in case the monies to arise from such sale shall be insufficient to pay and satisfy what shall be found due to such mortgagee or mortgagees, such mortgagee or mortgagees shall be admitted a creditor or creditors under such Commission, for such deficiency, and receive a dividend or dividends thereon out of the Bankrupt's estate or effects, rateably and in proportion with the rest of the creditors seeking relief under the said Commission, but so as not to disturb any dividend or dividends then already made; and for the better making such inquiry, and taking such account as aforesaid, and making a title to such purchaser or purchasers, all parties shall be examined by the said Commissioners, or either of them, upon interrogatories or otherwise, as the Commissioners, or either of them, shall think fit, and shall produce, before the said Commissioners, or either of them, upon oath, all deeds, papers, and writings in their respective custody or power, relating to the estate or effects of the said Bankrupt or Bankrupts, as the Commissioners, or either of them, shall direct.

In foreclosure suits, this Order to be cited to Court.

Parties having special liens (legal or equitable) to have their choice of agent.

That in all foreclosure causes against a mortgagor becoming Bankrupt, his assignee shall, at the hearing or other convenient opportunity, draw the attention of the Court to the increased costs occasioned by the morgagee proceeding in such cause instead of proceeding under this Order; and that all sales in Bankruptcy on behalf of any mortgagee or party having a special lien, whether legal or equitable, shall, at the option of such mortgagee or party, be conducted by his own agent or by the agent of the assignee.

Messenger and secretary to receive usual fees, 10s. per Commission, to be paid to "the B. and C. Fund."

VIII.—That the messenger of the Commissioners of Bankrupt, and the Lord High Chancellor's Secretary of Bankrupts shall continue to receive, until further order, such fees as they have heretofore been in the habit of receiving in matters of Bankruptcy; and that the Secretary of Bankrupts shall pay to the "Bankruptcy and Compensation Fund Account," the sum of ten shillings for each Commission to be issued by the Lord Chancellor.

Registrars to as-

IX.—That the registrars of the Court of Bankruptcy do assist their

Honors the Commissioners of Bankrupt in the taxation of costs, in such manner as the Commissioners shall from time to time direct. sist in taxation.

Agent of assignee to be also of Commission.

X.—That the agent of the assignee or assignees in any Commission shall also be agent to the Commission; and that in any future Commission the agent who shall issue the same shall, on the choice of assignees, hand over to the agent of such assignee or assignees (if he himself be not appointed such agent), the Commission and the file of proceedings thereunder.

Accustomed fees of the Court, how received and applied, by messenger.

Surplus to B. & C. Fund.

XI.—That the accustomed fees now payable for the Court shall continue to be received by the messenger, and applied towards payment of a court keeper and tipstaffs and the other incidental expenses necessary for the proper maintenance of such Courts as the Commissioners, or either of them, shall direct; and that the surplus (if any) shall be paid at the end of every six months to the credit of the "Bankruptcy and Compensation Fund Account."

Fees on taxation, how applied.

XII.—That upon the taxation of all bills of fees or disbursements by the Commissioners of Bankrupt, or either of them, there shall be paid the same fees as would have been payable to the Chancery Fund if such bills had been taxed by one of the Masters; which fees shall be paid by the Commissioners of Bankrupt to the credit of the "Bankruptcy and Compensation Fund Account."

"Dealer and Chapman" in petition, &c.

XIII.—That the words "dealer and chapman" shall, in all cases, be inserted in the petition and Commission as part of the description of the alleged Bankrupt or Bankrupts, whether these words be in the docket or not.

Clerical errors amended.

XIV.—That when, in any Commission, mere clerical errors shall occur which can be amended by reference to the docket upon which the said Commission shall have issued, the same may be amended in the office of the Secretary of Bankrupts notwithstanding the Commission may have been opened, provided the same shall not have been adjudicated upon; such Commission, in all cases, to be resealed, and a memorandum shall be endorsed thereon by the Secretary of Bankrupts, of the fact of such resealing.

EDWARD B. SUGDEN, C.

* * *

In Bankruptcy—And in the Matter of an Act, passed in the 12th & 13th year of the reign of her Majesty Queen Victoria, entitled "An Act for the Amendment of the Law of Bankruptcy in Ireland."

RULES AND ORDERS RELATING TO OFFICIAL ASSIGNEES MADE BY THE COMMISSIONERS OF BANKRUPT, JOHN MACAN, ESQ., Q.C., AND THE HONORABLE PATRICK PLUNKET, WITH THE CONSENT OF THE RIGHT HONORABLE THE LORD CHANCELLOR, IN PURSUANCE OF THE PROVISIONS OF THE SAID ACT—

IT IS ORDERED as follows:—

Official Assignee no trade or other employment.

I.—That no official assignee shall, either directly or indirectly, carry on any trade or business, or hold or be engaged in any office or employment, other than his said office and employment as official assignee.

Appointment to be enrolled.

II.—That each official assignee, upon obtaining his appointment as such from the Lord Chancellor, shall lodge same in the office of the Lord Chancellor's Secretary of Bankrupts, and cause same to be duly enrolled, and a certificate of such enrolment duly endorsed thereon.

To give £5,000 security.
By Guarantee Society,
or Recognizance or Bond.

III.—That each Official Assignee shall find security to the extent of five thousand pounds sterling, either by security of any guarantee society established by charter or Act of Parliament in any part of Great Britain or Ireland, if the Commissioners of Bankrupt shall think fit to accept the same, or by the recognizance or bond of such Official Assignee, together with such number of sureties as the Commissioners may approve of; every such recognizance to be acknowledged as directed by the said Act; and the condition of every such security shall be in such form as the Commissioners, with the approbation of the Lord Chancellor, may direct.

If by Bond, to be executed before Commissioner, and lodged in Secretary of Bankrupt's office,
To be enrolled.

IV.—That if the security to be given by and for such Official Assignee be by bond, every such bond, and the condition thereof, shall be in such form as the Commissioners, with the approbation of the Lord Chancellor, shall direct, and shall be executed by the several obligors therein, before the Commissioners of Bankrupt, or one of them, and shall be thereupon lodged by one of the registrars in the office of the Lord Chancellor's Secretary of Bankrupts, who shall cause same to be duly enrolled, and a certificate of such enrolment to be endorsed thereon, and preserve said bond among the records of said office.

Every 1st Jan. to make declaration that sureties are alive, &c.

V.—That each Official Assignee, for whom security shall have been given by recognizance or by bond, shall, on the 1st day of January in every year, or within one week then next following, make a declaration in writing under his hand, to be by him filed in the office of the Lord Chancellor's Secretary of Bankrupts, that to the best of his knowledge and belief, his sureties are alive and solvent; and in such declaration state to the best of his belief any change of residence of any or either of such sureties, which declaration shall be dated by said Secretary, and preserved among the records of said office.

On pain of dismissal, to give immediate notice of death, &c. of surety.

VI.—That each Official Assignee, for whom such security by recognizance or by bond shall have been given, shall, on pain of dismissal, give immediate notice in writing to the Commissioners of Bankrupt, or one of them, of the death or insolvency of either or of any of his sureties, and shall, if required by such Commissioner, cause a new recognizance or bond to be executed to the like amount by another surety, to be approved of as above directed.

VII.—That the Official Assignees respectively shall be appointed to the several Commissions, issued on and after the 1st November, 1849, and shall act as such in all proceedings under same, in such order as the Commissioners respectively shall in each case direct.

Shall be appointed to commissions in such order as Commissioners direct.

VIII.—That every such appointment shall be in writing, under the hand of the Commissioners, or one of them, and shall be executed in duplicate, and attested by one of the registrars, and shall be in the form or to the effect in schedule No. 1, to these rules annexed; and one part thereof shall be placed on the file of proceedings in the matter, and the other part shall be delivered to the Official Assignee.

Appointment to estate to be under hand of Commissioner.

In duplicate.

Form of

One part to be on the file.

IX.—That the agent to every Commission respectively, shall cause a certificate of such appointment under the hand and seal of the Commissioner who signed same, to be entered of record in the office for the enrolment of matters relating to Bankruptcy, and cause such certificate, with the note of the enrolment endorsed thereon, to be placed upon the file of proceedings in the matter.

Certificate of appointment to be enrolled,

and placed upon the file.

X.—That the Official Assignee shall not in any case, appoint the agent or attorney to the Commission, to be his agent or attorney in any proceeding under such Commission affecting such Official Assignee alone.

Agent to commission shall not be agent of Offi. As.

XI.—That each Official Assignee shall follow the instructions of the Commissioner under whom he acts, according to the exigencies of each particular case, and to the directions he shall from time to time receive from such Commissioner, subject however to the provisions contained in these orders.

Offi. As. to follow instruction of Commissioner,

subject hereto.

XII.—That each Official Assignee shall keep the following books to be used for the several estates to which he is appointed:—

Books to be kept by Official Assignee.

1. The Commission Book.
2. The Bankrupt's Books' Register, containing a list and description of all the books delivered to such Official Assignee under each estate.
3. The Register Land Book.
4. Debtor and Personal Property Book.
5. Bill Book.
6. Fair Cash Book.
7. Audit and Dividend Book, together with such other books as may be necessary, for the clear and satisfactory discharge of his duties as Official Assignee.

XIII.—That the said Commission book, No. 1, shall be an alphabet book, and the Official Assignee shall enter therein, in alphabetical order, the names and description of the Bankrupts under each Commission to which such Official Assignee is appointed, and as they appear in the said Commissions, with the date of such Commissions respectively; where more than one Bankrupt is included in such Commission, the said entry to be made under the initial letter of the Bankrupt first named in such Commission.

Book No. 1, to be alphabet book.

Official Assignee to enter therein, &c.

XIV.—That the Official Assignee, immediately on his appointment to any estate by the Commissioners, shall deliver personally or transmit by post to the Bankrupt a letter in the form in the schedule annexed, No. 2; and on being furnished with the list of Bankrupt's Creditors (A.) thereby required, the Official Assignee is minutely to examine same, so as to be prepared to oppose improper proofs at the meeting for the choice of Assignees.

To deliver or transmit immediately to Bankrupt, letter No. 2.

Duty on receiving list of Creditors.

On receiving list of Debtors.

On receiving the list of Debtors (B.) required by such letter, the Official Assignee is forthwith to transmit by post a printed circular in the form in schedule annexed, No. 3, to each of the said Debtors.

On receiving Bankrupt's schedule,

to make fair copy for own use;

Transmit original schedule.

All Assignees to state on oath they examined schedule, &c.

Duty on Off. Ass. if schedule incomplete.

XV.—That the Official Assignee shall, immediately on receiving the schedule and balance sheet of the Bankrupt, examine same, so as to ascertain that every page is signed by the Bankrupt, and all the columns and blanks properly filled up, and if this should be the case, he shall immediately cause a fair copy thereof to be made for his own use, and shall then transmit the original schedule and balance sheet to the agent of the Commission to be preserved among the proceedings, and the Official Assignee is to communicate fully with the Creditors' Assignee or Assignees, and with the agent to the Commission, and the Bankrupt if necessary, upon every part of the schedule and balance sheet, before the final examination, in order that all the Assignees may be prepared to state upon oath that they have carefully examined them, and whether or not they are satisfied that the Bankrupt has made a full and true disclosure of his estate and effects. If the Official Assignee should find that the schedule is incomplete in any respect, he is to return same to the Bankrupt without delay, and with such directions for the amendment thereof as the case may require.

To deposit in Bank of Ireland all bills, &c.

To present unaccepted bills.

To deliver docket therewith.

XVI.—That each Official Assignee shall deposit in the Bank of *Ireland* all bills, notes, and other negotiable instruments (except unaccepted bills of exchange,) as soon as he shall receive the same, and shall duly present without delay all unaccepted bills for acceptance, and in like manner deposit in said bank all unaccepted bills of exchange when same shall be accepted, and at same time deliver to the teller or cashier of the said bank a docket specifying the dates and short contents of the instruments so deposited, the name of the Official Assignee making such deposit, the name and description of the Bankrupt and Bankrupts, and the particular estate to which the same respectively belong.

Bank to demand payment of bills, &c., due;

and place to joint credit of Off. Ass. and Creditors' Assignee, &c.

XVII.—That when and so soon as any note or other negotiable instrument deposited as aforesaid shall become due, the said bank shall, in due course, cause same to be presented for payment, and receive the money due thereon, and forthwith place the sum so received (if any,) to the credit of the said Official Assignee and Creditors' Assignee or Assignees, and of the said particular estate as above directed.

Bills, &c., not paid, protested;

and then delivered back.

XVIII.—That in case any such bill, note, or other negotiable instrument shall not be paid, the said bank shall cause same to be noted or protested as is by law required, and after same shall have been noted or protested, shall cause same to be delivered back to the Official Assignee, in order that such legal proceedings may be taken thereon as the Commissioners, or one of them, may direct.

Official Assignee to make estates available.

To use utmost diligence to collect the debts.

To communicate with Commissioners.

XIX.—That in every case, the duty of making the Bankrupt's estate available for the benefit of the Creditors, will devolve particularly upon the Official Assignee, of which estate the debts owing to the Bankrupt constitute, in many instances, an important part; the Official Assignee is therefore not only to exert the utmost diligence and energy in collecting in said debts, but is at all reasonable times to communicate with the Commissioners thereon, in order that proper steps may be taken for enforcing payment thereof.

Not to keep in hands more than

XX.—That no Official Assignee shall keep in his hands, or under his control, upon any one estate more than £50, nor in the aggregate of the moneys received by him out of the Bankrupts' estate more than £250: and any excess beyond such sums respectively, shall be paid by him forthwith into the Bank of Ireland, to the joint credit of such Official Assignee and the Creditors' Assignee or Assignees, and of their joint account as such Assignees, and to the credit of the particular estate to which such money may belong; and no moneys shall be entered in any such account except such as are received by the Official Assignee in his official capacity.

£50 upon any estate, nor in the aggregate more than £250.

Excess to be paid into bank to joint credit of Off. Ass. and Creditors' Ass.

XXI.—That such Official Assignee shall, at the time of paying in such moneys, deliver therewith to the teller or cashier of the said bank a docket, specifying the date and amount of such payment, the name and description of the Bankrupt or Bankrupts, and the particular estate to which the money belongs, the name of the Official Assignee making same, and that same is to be placed to the joint credit of the said Official Assignee, and the Creditors' Assignee or Assignees, and of the said particular estate, and shall take a receipt for the same.

At time of paying into bank, to deliver therewith a docket.

XXII.—That moneys so lodged in said bank, or so standing in said bank to the credit of any matter in Bankruptcy, shall be drawn out except upon the joint cheque of the Official Assignee and of the Creditors' Assignee in such matter, signed by them respectively, unless the Commissioners of Bankrupt, or one of them, shall in any case otherwise specially direct.

Money drawn out of bank, upon joint cheque of Off. Ass. and Creditors' Ass.

XXIII.—That whenever, and as often as the Official Assignee shall receive or have in his hands, out of the moneys belonging to any one estate, the sum of £100 or upwards, he shall immediately give notice thereof in writing to the Creditors' Assignee or Assignees, stating in such notice when, from whom, and on what account, such sum had been received; and also whether or not he had lodged any, and what part thereof, in the Bank of Ireland, to his and their joint credit, and to the credit of such estate, as above directed; and also the date of such lodgment.

On receiving £100 out of any one estate, to give notice to Creditors' Assignee.

XXIV.—That each Official Assignee shall account once at least in every four calendar months, under every Commission to which he shall be so appointed as aforesaid, and oftener if so required by the Commissioners, or either of them.

To account every four months, and oftener, if required.

XXV.—That the Official Assignee shall before any audit enter in the book, called the "Debtor and Personal Property Book," (No. 4), the names of all the debtors to the Bankrupt's estate, as returned in his schedule and balance sheet, and shall state on the opposite page the reasons why the debts respectively are not paid; such book to be produced to the Court at every audit.

Before audit, to enter in book the names of debtors,

with reasons why debts not paid.

XXVI.—That fourteen days before the day appointed for the audit of the Official Assignee's account in any matter, he shall send to the Creditors' Assignee or Assignees a fair copy of the account to be laid before the Commissioner at such audit, a copy of which account the Official Assignee shall also deliver or send to the Bankrupt gratis, and to any creditor who shall have proved a debt, upon his applying for the same, and paying to the Official Assignee the sum of one shilling: but this rule is to apply to audits merely; if a dividend should be advertised, the Official Assignee is to send the account as prescribed by the thirty-sixth section of the above Act.

14 days before audit, to send fair copy of account to creditor's assignee.

To Bankrupt and to creditor who proved.

If dividend advertised, to send the account under s. 36.

XXVII.—That every account of the Official Assignee to be audited by the Commissioners shall be drawn up in the ordinary form of a debtor and creditor account, and the Official Assignee shall make himself the debtor

All accounts in form of debtor and creditor.

Entries dated according to facts, and numbered consecutively. Such further account as Commissioners direct.

therein; and every entry therein on the debtor and creditor side shall have a precise date annexed according to the fact, and shall state in substance the subject matter of each item; and all said entries shall be numbered consecutively, corresponding with the numbers of the respective vouchers or receipts applicable to such items. The Official Assignee, however, shall furnish such further or special account as the Commissioner may in any case direct.

If more kept in his hands than £50 on any one estate, or £250 in aggregate, charged with £20 per cent per an. on the excess, and liable to be dismissed from office.

XXVIII.—That if the Official Assignee shall keep in his hands or under his control more than £50 of money belonging to any one estate, or more than £250 in the aggregate of moneys belonging to Bankrupts' estates, for more than one week, he shall be charged in his accounts by the Commissioner with such sum as shall be equal to interest at the rate of £20 per cent. per annum, on the excess of the said sums of £50 or £250, as the case may be, for such time as such moneys shall be under his control beyond the said week, unless the money has been kept from some proper cause, to be allowed by the said Commissioners, or one of them; and the Official Assignee shall also be liable to be dismissed from his office upon the report of the Commissioner, or upon petition to the Lord Chancellor by the creditors' assignee or assignees, or by any creditor who has proved a debt under said commission, and shall pay the costs and expenses of such removal, and have no claim to remuneration.

Once in every 4 months to deliver to Commissioners an account up to last day of preceding month, showing the balances to credit of estate in Bank of Ireland, and also cash balances of every estate in hands.

XXIX.—That the Official Assignee shall once in every four months deliver to the Commissioners, or one of them, on account made up to the last day of the preceding month, together with his cash-book and bank-book duly balanced, and any other books that the Commissioners may require, and such account shall show the balances respectively placed and standing to the credit of every estate under the charge of such Official Assignee in the books of the Bank of Ireland; such balances to be previously certified by the accountant-general of said bank or his deputy; and every such account shall also show the cash balances respectively of every Bankrupt's estate then in the hands or under the control of the Official Assignee.

Account specified in preceding Rule to be kept by Registrars, open to inspection of Creditor who proved. Notice posted in Court.

XXX.—That every such account shall be carefully kept by the registrars of the Court of Bankrupt, and shall be open to the inspection of any creditor who shall have proved a debt under any Commission; and that a notice shall be posted in each Court by the registrar of such account having been delivered; and that any creditor applying to the Court may inspect same, without fee, at such convenient time as the Commissioners shall appoint.

All moneys ordered to be invested, shall be in joint names of Official and Creditor's Assignee. No Stock sold out, except under order of Commissioner.

XXXI.—That all monies ordered by the Commissioners to be invested in the public funds, shall be invested in the joint names of the Official Assignee and Creditors' Assignee or Assignees; and that no stock so purchased and standing in the joint names of said Assignees, shall be sold out or transferred, except by an express order under the hand of the Commissioners, or one of them.

Official Assignee to keep cheque book for each matter, and fill up and initial, before presented to Creditor's Assignee for signature.

XXXII.—That the Official Assignee shall keep a regular cheque book for such matter in Bankruptcy in which he is appointed as Official Assignee; and that he shall fill up every such cheque, and see that same is correct, and specify therein the account or purpose for which the sum therein specified is to be paid, and shall initial every such cheque before same is presented to the Creditors' Assignee or Assignees, for his or their signature.

Date, &c., of cheque entered in the block. Block initialled

XXXIII.—That the date and other particulars of all cheques so drawn shall be entered by the Official Assignee in the block belonging to said cheque book according to the respective numbers of said cheques, and said block shall be then initialled by the Official Assignee and the Creditors' Assignee, which block shall be produced to the Commissioners whenever they shall require the same.

by Official and Creditors' Assignee.

XXXIV.—That, when a dividend shall be declared, the agent to the Commission and assignee shall forthwith make out three lists of the creditors in the order of their proofs on the file, with the dates and amounts of such proofs respectively, and the number of such dividend, and whether same be a first or final dividend, or otherwise, and the securities (if any,) exhibited at the time of proof, according to the printed form hitherto used and sanctioned by the Court, and shall sign and date said lists, and forthwith deliver same to the Official Assignee, who shall thereupon examine them, and compute the amount to which each creditor is entitled under said order of dividend, and fill up the column applicable thereto, and shall then sign and date said three lists, and retain one thereof, and deliver the other two so signed to the agent, who shall place one of them on the file of proceedings, and cause the other to be posted in the Court of the Commissioner, who may have made such order of dividend.

When dividend declared, agent to make out three lists of Creditors, according to Forms hitherto used, and deliver same to Official Assignee, who shall compute, enter amount, and sign said three, keep one and hand two to agent.

XXXV.—That the Official Assignee shall then proceed, without delay, to fill up and initial a cheque for the dividend payable to each creditor as specified in said lists, and have same signed by the Creditors' Assignee or Assignees according to the directions above given with respect to the cheque book to be kept by the Official Assignee in each Bankruptcy matter. But it shall be in the discretion of the Commissioners respectively in each case to make a special order for payment of dividends under the sum of £1, by allowing the assignee to draw out of bank a sufficient sum for payment thereof in cash, under such regulations as the Commissioner making such order may approve of.

To fill up and initial a cheque for each dividend, and have same signed by Creditors' Assignee.

XXXVI.—That all dividends shall be paid by the Official Assignee, and on the joint cheques of the Official Assignee and Creditors' Assignee, and that the Official Assignee shall provide printed cheque books for that purpose, and appropriate one or more of same as may be necessary in each Bankruptcy.

All dividends to be paid by Offic. Assig. on joint cheques.

XXXVII.—That each Official Assignee shall, within one week after the declaration of a dividend, give notice in one or more newspapers, if the Commissioner should so direct, and by a printed circular letter to each creditor (to be sent through the post office at the cost of the estate,) of the time and place of the delivery of the dividend cheques, and that at such time the Official Assignee will require the production of such securities (if any,) as the creditor exhibited at the time of his proof, and that no dividend cheque will be delivered to a creditor holding any security for his debt, until such security shall be produced, without the special order of the Commissioners, or one of them, in that behalf.

Off. Ass. within a week after declaration to give notices, if so directed, of the time and place of delivery of divid. cheques.

XXXVIII.—That when a creditor, or any person duly authorized under his hand to receive his dividend cheque, shall apply for same, the Official Assignee shall require the production of such securities (if any,) as the creditor exhibited at the time of his proof, and, if satisfied that the amount of the said dividend still remains due, shall, upon the creditor or such other person signing a receipt for same, mark the securities (if any,) with the amount of that dividend, and deliver the dividend cheque for the same; but no dividend cheque shall be delivered to any creditor holding a security for his debt until such security shall be produced and marked as aforesaid, provided that upon the statement of a creditor that he is unable to produce his

When cheque applied for, securities to be produced, and marked.

No cheque delivered until same, &c.

Creditor not producing, examined on oath.

Indemnity as approved by Commissioner.

security, and that the same has not been parted with for any valuable consideration, nor assigned to any person, he shall be examined on oath before a Commissioner as to the cause of such inability, and his examination shall be filed with the proceedings; and if the Commissioner is of opinion that the security cannot, for a sufficient cause, be produced, the creditor shall give a sufficient indemnity to the Official Assignee, to be approved of by the Commissioner, and upon such indemnity being given the Official Assignee shall deliver the dividend cheque to the creditor.

Creditors' Assignees not exonerated from any duties.

XXXIX.—That nothing in these rules contained shall be construed as exonerating the Creditors' Assignee or Assignees from any part of his or their duties as such, and more especially the duty of exercising a general superintendence over the proceedings, and using due diligence to have all the estate and effects of the Bankrupt made available for the benefit of the creditors.

Present practice to continue,

subject to Act and Rules.

XL.—That the present practice of the Court of Bankruptcy is hereby confirmed, and shall be continued, except so far as same may be altered or modified by the said Act or by these rules, or by any further rules that may be made pursuant to the provisions of the above recited Act.

SCHEDULE, No. I.

Appointment of Official Assignee to each matter in Bankruptcy.

In the Matter of Bankrupt. } Court of Bankruptcy, Dublin, the day of 18

I, the Commissioner of Bankrupt, whose name is hereunto subscribed, duly authorised to act, and acting under a Commission of Bankrupt now in prosecution against do by this writing, under my hand, select and appoint to be the Official Assignee of the estate and effects, real and personal, of the said Bankrupt, pursuant to the statute in that case made and provided.

Given under my hand at the place first aforesaid, this day of in the year one thousand eight hundred and

Signed by the said Commissioner of Bankrupt, in presence of

Commissioner of Bankrupt.

Registrar.

SCHEDULE, No. II.

Letter from Official Assignee to Bankrupt.

In the Matter of Bankrupt. } Office of Official Assignee, No. street, Dublin, day of 18

SIR—Having been appointed Official Assignee to your estate, I have to inform you that the Court requires you to make out and deliver to me immediately—

1st.—A list of all your creditors, according to the printed form (A) already sanctioned by the Court, all the columns of which you are carefully to fill up, especially the last, in which you are to specify any bill, note, goods, property, or other security which the creditor may hold on account of his debt; and this list you are to furnish to me complete within eight days from this date.

2nd.—A list of all debtors to your estate, according to the printed form (B) already sanctioned by the Court, the columns of which you will also carefully fill up as above directed; and if any debtor has been Bankrupt, state in the last column if the debt has been proved, and the amount of dividend (if any) ordered thereon. This list is to be furnished to me within one fortnight from this date.

The Court also requires that you apply yourself at once to the preparation of your schedule and balance sheet, according to the printed forms already sanctioned by the Court, and that you strictly conform to the directions contained therein, and furnish the same to me ten clear days at least before the day fixed for your final examination.

I have to inform you further, that all your trade-books seized by the messenger are now in the custody of of who will submit same for your examination at all reasonable hours, in order that you my prepare without delay, the said lists and your schedule and balance sheet.

Official Assignee.

To the said Bankrupt.

SCHEDULE No. III.

In the Matter of Bankrupt. } Office of Official Assignee, No. street, Dublin, day of 18

Circular to debtors from Official Assignee.

SIR.—The Bankrupt in the above matter has returned you as a debtor to his estate in the sum of £ , for (here state the subject matter of the debt, and whether secured by bill, note, or otherwise.)

I have to request, therefore, that you will without delay cause the above sum to be paid into my office here. In the event of your neglecting so to do, or to show to my satisfaction that said sum is not due by you, within one week from this date, I shall forthwith apply for, and cause to issue against you, the Commissioners' Summons, under the 48th section of the 6th Wm. IV., chap. 14, to compel you to attend before him, *at your own expense*, to be examined touching said debt.

Official Assignee.

To

Dated at the Court of Bankruptcy, Dublin, this 1st day of November, 1849.

JOHN MACAN, } The Commissioners of Bankrupt.
P. PLUNKET, }

I approve of the foregoing Rules,

MAZIERE BRADY, C.

Nov. 1, 1849.

FORMS AND PRECEDENTS,

ETC.

BEFORE ANY ACT OF BANKRUPTCY COMMITTED.

Let the following be served personally on the debtor by a person *not* the creditor, who can read and prove handwriting, see page 58. (See schedule A No. 2 of Act, p. 189, *ante*.)

Particulars of Demand.

To E. F. of

The following are the particulars of the demand of the undersigned A. B. of —— against —— the said E. F., amounting to the sum of —— pounds [*here copy the account.*]

Take notice, That I the said A. B. hereby require immediate payment of the said sum of —— pounds. Dated this —— day of —— in the year of our Lord ——.

(Signed) A. B.

Let the person who served the above, together with the creditor himself, make the following joint and several affidavit. It may be made, according to convenience, before any of the parties named in s. 69 of 12 & 13 Vic., page 146. (See schedule A No. 1 of Act, p. 188, *ante*.)

Affidavit for Summoning a Trader Debtor.

A. B. of —— and C. D. of —— severally make oath and say, and first this deponent A. B. for himself saith, that E. F. of [*describe fully*] is justly and truly indebted to this deponent in the sum of —— pounds, for, &c. [*stating the nature of the debt with certainty and precision*]; and this deponent further saith, that the said E. F., as this deponent verily believes, is a trader within the meaning of the statutes relating to Bankrupts, or some or one of them, and resides at —— and that an account in writing of the particulars of the demand of the said A. B., amounting to the said sum of —— pounds, with a notice thereunder, written in the form precribed by the statute in that case made and provided, purporting to require immediate payment of the said debt, is hereunto annexed; and this deponent C. D. for himself saith, that he did on the —— day of —— instant [*or* last] personally serve the said E. F. with a true copy of said account and notice.

Sworn, &c.

Let this be filed in the office of the Secretary of Bankrupts at the Four Courts, Dublin, between 11 and 4 o'clock, on any week day. (See sch. A No. 1 of Act, p. 188, *ante*.)

Form of Summons.

(See schedule A No. 3 of Act, p. 189.)

These are to will and require you to whom this summons is directed, personally to be and appear before the Commissioners of Bankrupt, or one of them, at the Court of Bankruptcy, at the Four Courts, Inns-quay, Dublin, on —— the —— day of —— at —— o'clock; and you are hereby informed that the purpose for which you are thus summoned to appear before the said Commissioners or Commissioner is to ascertain, in manner and form prescribed by the statute in that case made and provided, whether or not you admit the demand of A. B. of —— (who claims of you the sum of —— pounds for a debt), or any and what part thereof, or whether you verily believe that you have a good defence to the said demand, or to any and what part thereof; and hereof you are not to fail at your peril. Given under my hand, the —— day of —— in the year of our Lord

(Signed) J. K.

To E. F. of Commissioner.

How to proceed on same, see directions at pages 58 and 59, *ante*.

Admission of Debt by Trader Debtor, if signed in Court.

Court of Bankruptcy, Dublin,
Day of

Whereas I the undersigned E. F. of —— am summoned to appear before this Honorable Court for the purpose of stating, in manner prescribed by the statute in that case made and provided, whether or not I admit the demand of A. B. of —— (who claims of me the said E. F. the sum of —— pounds for a debt,) or any part thereof, or whether I verily believe that I have a good defence to the said demand, or to any and what part thereof: Be it known, that I the said E. F. hereby confess that I am indebted to the said A. B. in the said sum of —— pounds [*or* in part of the said sum of —— pounds, that is to say, in the sum of —— pounds].

(Signed) E. F.

Admitted before me, J. K.
Commissioner.

Admission of Debt by Trader Debtor, signed out of Court.

I the undersigned E. F. of —— do hereby confess, that I am indebted to A. B. of —— in the sum of —— pounds.

(Signed)

Dated this —— day of —— A.D.
Witness, G. H., Attorney for the said E. F., and subscribing witness to the execution hereof as such attorney.

Deposition by Trader Debtor of belief of good answer to Creditor's demand, or some part thereof.

Court of Bankruptcy, Dublin, —— day of —— A.D.

E. F. of —— being sworn on the day and year and at the place aforesaid, upon his oath saith, that he verily believes he has a good defence to the demand [*or* to —— pounds, part of the demand] herein-after mentioned of A. B. of —— who claims of the said E. F. the sum of —— pounds for a debt alleged to be due and owing from the said E. F. to said A. B., as stated in the affidavit of the said A. B. filed in the office of the Lord Chancellor's Secretary of Bankrupts, and bearing date the —— day of ——

E. F. J. K. Commissioner.

Form of Affidavit to be used under provisions 12 *&* 13 *V.*, *c.* 107, *s.* 24, *Ir.*, *which see, page* 103, ante.

A. B., of ———, (gentleman, merchant, farmer, &c., as the case may be) maketh oath, and saith that John Black, of Brown-street, in the city of Dublin, broker, is justly and truly indebted unto this deponent (*and to C. D., his partner*) in the sum of one hundred pounds sterling,

(*It is usual to set forth the particulars and consideration for the debt, although not absolutely necessary.*—Ex p. Harman, 2 Gl. & J., 26.)

and deponent further saith, that the said John Black is a trader within the meaning of the laws now in force concerning Bankrupts in Ireland, as this deponent verily believes.

Sworn before me this — day of ——, at ——, in the county (or the city) of ——.

N. B.—*The Jurat must set forth the right whereby the person administers the oath, as* "A Commissioner of Bankrupt," *or* "a Registrar of the Court of Bankruptcy," *or* "One of Her Majesty's Justices of the Peace in said County."

(Before whom Affidavits may be sworn, see 12 & 13 V., c. 107, s. 69, page 146.)

Let the above be filed in the Secretary of Bankrupt's Office, at the Four Courts, between 11 and 4 o'clock, on any week day, and let a copy of same, with the following notice, be served on the trader, by a person *not* the Creditor, who can prove service.

Notice of Affidavit filed.

Take notice that an affidavit, a copy of which is hereunto annexed, hath been filed in the Office of the Lord Chancellor's Secretary of Bankrupts in Ireland, pursuant to the provisions of a statute passed in the session of Parliament held in the twelfth and thirteenth years of the reign of Her Majesty Queen Victoria, intituled "*An Act for the amendment of the law of Bankruptcy in Ireland*," and that I (*or we*) do hereby require immediate payment of the debt in the said Affidavit mentioned, with further interest thereon to the day of payment. Dated the — day of ——, 185 . A. B.

To John Black, of Brown-street, in the city of Dublin, broker.

Affirmation of a Quaker.

A. B., of ———, being one of the people called Quakers, upon his solemn affirmation saith that, &c. (*write* affirmant *instead of* deponent.)

Affirmed before me, &c., (*as above.*)

FORMS

Neither *before* nor *after* an Act of Bankruptcy, but the filing of which are themselves ACTS OF BANKRUPTCY COMMITTED:—

Declaration of Insolvency.

(12 & 13 V., c. 107, s. 22, Ir., pages 101 and 191.)

I the undersigned E. F. of ———, do hereby declare, that I am unable to meet my engagements. Dated this — day of ———, in the year of our Lord .

(Signed) E. F.

Witness, G. H., Attorney of the Court of .

The recent Irish statute makes provision for any necessary or other deviation from the abov

Form by adding the words "*to the effect*" thereof, which words are not in the English Act.—See 12 & 13 V., c. 107, s. 22, Ir., page 101. The Form is given in sch. D, p. 191, *ante*.

Let this be filed in the Secretary's Office. It is not an Act of Bankruptcy, unless a Commission issue within two months from the filing, see page 101. The months are calendar, p. 187.

The like Declaration of Insolvency by Incorporated Company. (*See* 8 *&* 9 *Vic.*, *c.* 98, *p.* 330.)

Petition for Arrangement.

To avoid repetition, see Form, sch. I, page 194, and accompanying affidavit sch. K, page 195. Read s. 23, at page 102, and note at foot, and ss. 90, 91, 92, 93, and notes thereto, pp. 162 to 167, respectively.

Let the Petition be filed as above. It is not an Act of Bankruptcy unless a Commission issue within two months *after notice* of filing, nor at any time unless the Petition be dismissed by the Commissioner.—p. 102.

FORMS

AFTER AN ACT OF BANKRUPTCY COMMITTED.

Affidavit of Debt to obtain a Commission.

A. B., of ———, in the city (or county) of ———, maketh oath, and saith that John Black, of Brown-street, in the city of Dublin, broker, is indebted to this deponent [and to ——— and ———, his co-partners in trade] in the sum of £50 and upwards, for ———————, and that the said John Black has become Bankrupt within the true intent and meaning of some or one of the statutes made and now in force concerning Bankrupts, as this deponent is informed and verily believes.

Sworn, &c., at ——, the — day of ——, 185 .

The several Forms, Depositions, Proofs of Petitioning Creditor's Debt; of Trading; of the Act of Bankruptcy according to its nature or kind; of the adjudication, &c., are to be had printed at the Stationer's, on large paper suited to the requirements of the Bankruptcy Court, with Blanks to be filled according to the peculiarities of individual cases.

Also Blank Schedules; Forms of Audit and of Dividend, &c. No Stamp is necessary.

Form of Warrant of Committal of Bankrupt or other for unsatisfactory answering or refusing to sign Examination,	(*See page* 191.)
——— *Warrant for refusing to be sworn,*	(*See page* 192.)
——— *Warrant for disturbing Court,*	(*See page* 192.)
——— *Search Warrant,*	(*See page* 193.)
——— *Certificate to Arrangement Debtor, under* 12 *&* 13 *V.*, *c.* 107, *s.* 106, *Ir.*,	(*See page* 195.)
——— *Certificate to Arrangement Trustee,*	(*See page* 196.)

Form of Affidavits under 12 & 13 *V.*, c. 107, s. 4, *Ir., whereon to ground a Warrant to apprehend and commit a Bankrupt who is about to "quit Ireland."*

IN BANKRUPTCY.

In the matter of A. B. and C. D. of —— in the county of —— drapers, dealers, and chapmen, trading as A. B. and Company, against whom a Commission of Bankrupt has issued under 12 & 13 Vic., c. 107, § 4.

F. G., of ———, near Newtown, in the county of ———, farmer, saith that on the 13th of November, 1819, deponent was present in the town of Newtown aforesaid, and in the premises held by said A. B. and C. D., under deponent, and saw the stock in trade of said A. B. and C. D., selling by auction, and the said C. D., and the shopman of said A. B. and C. D., assisting at said sale, by handing the goods to the auctioneer. Saith ———, who resides next door to said A. B. and Co., informed deponent, which he believes to be true, that on the Saturday night previous to the said 13th of November, he saw the said C. D., at the hour of twelve o'clock at night removing property from the yard at the back of the house in which said A. B. and C. D. resided. Saith that on Monday night previous to said sale deponent saw the wife of said C. D. removing goods from the house of business of said A. B. and C. D. Saith that on Friday, the 16th instant, deponent applied to Mr. ————, father-in-law to the said C. D., and was informed by him that said C. D. had, with his wife, left Newtown aforesaid the day previously for Dublin. Saith it is the current report in the said town, and deponent verily believes the same to be true, that the said A. B. and C. D. have quit same with intent of going to America. Saith that deponent knows that the said A. B. and C. D. have carried on their business for upwards of three years last past in a house built by deponent opposite ————. Saith he was in their shop on the 23rd October last past, and saw therein a quantity of soft goods, groceries, &c., in which they dealt, but not near so much as deponent observed therein on previous recent occasions; and saith on the day of the aforesaid sale by auction there was before the commencement of the auction a very considerable reduction in the quantity of goods compared with that which was on the 23rd of October in said concern.

Sworn before me this 17th day of November, in the Court of Bankruptcy, in the city of Dublin, } JOHN MACAN.

Additional Affidavit

IN BANKRUPTCY.

In the Matter of A. B. and C. D. both of ——, in the county of ——, drapers, dealers and chapmen, trading as A. B. and Company, against whom a Commission of Bankrupt has issued under 12 & 13 Vic., c. 107, § 4.

—— of —— street, in the city of Dublin, commercial clerk, maketh oath and saith, that he is in the employment of J. K. and Co., the petitioning creditors in this matter. Saith on the 14th of November instant, deponent proceeded to Newtown in the county of —— for the purpose of seeing the said A. B. and C. D., and procuring from them, if possible, a settlement of debt due by the said A. B. and C. D. to the said J. K. and Co., saith, on arriving at Newtown on or about the hour of 9 o'clock of the forenoon of said 14th of November, deponent proceeded to the house of business of the said A. B. and C. D. and found same closed up, and deponent applied to a Mr. ——, who procured for deponent the key of said house, and deponent opened said house and went through all the rooms thereof, and saith said house was entirely empty and all the property removed from same. Saith deponent was thereupon informed by several parties that said A. B. had left by railway on or about the 6th day of November instant, and that he had not yet returned. Saith deponent then applied to, and had a conversation with, one Y. Z., who had been in the employment of the said A. B. and C. D. up to the 18th of November, instant. Saith that the said Y. Z. distinctly and clearly stated that said A. B. had gone a fortnight previously to Dublin with the intention of going to America, and that said A. B. was accompanied by his wife and son. Saith, deponent having heard that C. D. was still in Newtown, deponent proceeded to the residence of Mr. ——, his father-in-law, where he saw the above Y. Z., who stated that he Y. Z. was authorized to transact any business by and for the said A. B. and C. D., and on pressing for an interview with the said

C. D., was informed by the said Y. Z. that he C. D. could not see deponent. Saith on same day deponent saw the said Y. Z. carrying the books of the said A. B. and C. D. across the street and depositing them at the house of one —— in said street. Saith, deponent is informed, and verily believes, that for a week previous to the said C. D. leaving said Newtown, he had removed large quantities of goods, the property of the said A. B. and Co., with intent, as deponent believes, to defraud their creditors; and deponent also believes for the reasons and facts aforesaid, the said A. B. and C. D. are about to quit Ireland, and that they will remove and conceal their goods and chattels with intent to defraud their creditors, unless they be forthwith apprehended, and unless authority be given to seize their books, papers, monies, securities for monies, and chattels wheresoever they may be found, so that they may be safely kept until the Commission of Bankrupt in this matter shall be issued, or until the said A. B. and C. D. shall be declared Bankrupt.

Sworn before me this 17th day of November, 1849, in the Court of Bankruptcy, in the city of Dublin, } JOHN MACAN.

Attorney.

Warrant to arrest a person against whom a Commission has issued, and also to seize his books, papers, monies, &c.

(12 & 13 Vic., cap. 107, sec. 4.)

Whereas, her Majesty's Commission, under the Great Seal of Ireland, grounded upon the statutes in force concerning Bankrupts, bearing date at Dublin, the 17th day of November, 1849, hath been awarded and issued forth against A. B. and C. D., both of ——, drapers, dealers, and chapmen, directed to the Commissioners of Bankrupt, John Macan, Esq., Q.C., and the Hon. Patrick Plunket, according to the form of the statutes in that case made and provided. And whereas it hath been proved upon oath to the satisfaction of me, the undersigned Commissioner of Bankrupt, authorized to act in the prosecution of said Commission, that there is probable cause for believing that the said A. B. is about to remove or conceal his goods and chattels, with intent to defraud his creditors, unless he be forthwith apprehended: These are therefore by virtue of the Act intituled "*An Act for the amendment of the Law of Bankruptcy in Ireland*," to authorize and require you my messenger, to whom this my warrant under my hand and seal is directed, immediately upon receipt hereof to arrest the said A. B. by his body, and him safely to convey to the Four Court Marshalsea in the city of Dublin, and him there to deliver to the Marshal of the said prison, who is hereby authorized and required to receive the said A. B. into his custody there, and him safely keep until the expiration of the time allowed for opening the said Commission, or until the said A. B. shall be adjudged Bankrupt under said Commission, and be thereupon dealt with under said Commission according to the law relating to Bankrupts, and these are further to authorise and require you my messenger, to whom this warrant is directed, immediately upon receipt hereof to seize the books, papers, monies, securities for monies, goods and chattels of the said A. B. and C. D., wheresoever they may be found, and them safely keep until the expiration of the time allowed for opening the said Commission, or until the said A. B. and C. D. shall be adjudged Bankrupt under said Commission, and be thereupon dealt with under said Commission according to the laws relating to Bankrupts.

Done at the Court of Bankruptcy, Dublin, this — day of ——, 185 .

JOHN MACAN, Commissioner of Bankrupt.
THOMAS BARTLEY, Registrar.

To M. N., my messenger, and his assistants, and to —— ——, Esq., Marshal of the said prison, or to his deputy there. }

G. H., Solicitors to I. K. and Co., the Petitioning Creditors. }

TABLE OF FEES

TO BE RECEIVED BY THE

LORD CHANCELLOR'S SECRETARY OF BANKRUPTS.

		£	s.	d.	
1	For every docket struck	2	10	0	
2	For every Commission of Bankrupt	8	13	6	
	N.B.—The Docket Fee allowed out of this fee to the same party who struck the docket.				
3	For every supersedeas ...	6	16	6	
4	For every certificate of Bankrupt's conformity ...	7	7	0	
	N.B.—This fee for each Bankrupt.				
5	For every petition ...	1	1	0	
6	For every Order on petition, or office copy thereof, or office copy of any document filed in the office, first sheet of 72 words ...	0	2	6	Ir.
	Each succeeding sheet	0	1	0	Ir.
	Clerk's fee per sheet	0	0	1½	
7	On filing every Commissioner's report or certificate, affidavit, and other documents, first sheet of 72 words	0	2	6	Ir.
	Each succeeding sheet	0	1	0	Ir.
8	For every subpœna ...	0	12	4	
9	For every attachment ...	1	10	10	
10	On filing every declaration of Insolvency ...	0	2	6	
11	For every certificate thereof	0	2	6	
12	For every search ...	0	3	1	
13	For every search and certificate	0	6	2	
14	For every search for docket	0	1	0	

LIST OF FEES

PAYABLE IN THE

OFFICE OF THE CLERK OF INROLLMENTS IN BANKRUPTCY.

		£	s.	d.
1	Inrolling certificate of the appointment of Assignee ...	0	11	1
2	Inrolling all other documents for every skin of 10 office sheets	1	12	1
3	For each Certificate	0	3	1
4	For attested copy inrollments			
	First sheet	0	2	4
	Every succeeding sheet	0	0	11
5	Search	0	1	0

TABULAR VIEWS

OF THE FOLLOWING BANKRUPT STATUTES

EXTENDING TO ENGLAND OR IRELAND,

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114	1 & 2 W. 4, c. 56, s. 32	see 16	Petitions of appeal.	185
115	6 G. 4, c. 16, s. 98	188	No stamp duty, &c.	185
116	6 W. 4, c. 14, Ir., s. 8	0	Lord Chancellor to settle fees.	185
117	0	0	Secretary, Registrar and officers.	186
118	5 & 6 V. c. 122, s. 98	276	Construction clause.	186
119			Act may be amended, &c.	188

TABLE II.

6 *Wm.* 4, *Cap.* 14, *Ir.*

Irish Act. 6 W. 4. c. 14.	Corresponding Sections all English, save in two instances.	Eng. Consol. Act. 1849.	Subject matter.	Page.
Sections.		Sections		
1	6 Geo. 4, c. 16, s. 1	0	Preamble and repeal of various Acts from commencement of Bk. Laws.	197
2	1 & 2 W. 4, c. 56, s. 39	0	Power of present Coms. to cease.	200
3	0	0	Ld. Lieut. may appoint a new Com.	201
4	1 & 2 W. 4, c. 56, s. 8	0	All Coms. to issue thereto. Oath.	202
5	0	0	Fees payable to Commissioner.	202
6	1 & 2 W. 4, c. 56, s. 51	0	Comr. not to practice—nor be M.P.	203
7	0	0	— to pay over to Bank of Ireland.	203
8	11 & 12 G. 3, c. 8, s. 65	0	Lord Chancellor to regulate fees.	203
9	0	0	Compensation to existing Comrs.	204
10	0	0	Salary to Commissioner £1500.	205
11	1 & 2 W. 4, c. 56, s. 56	0	Lord Chancellor may lessen fees.	206
12	0	0	Commissioner to sit the whole year.	207
13	0	0	Sittings & meetings in Dublin. Register.	208
14	1 & 2 W. 4, c. 56, s 11	0	Lord Chancellor may make rules.	208
15	0	0	Commissioner not liable to actions.	209
16	1 & 2 W. 4, c. 56, s. 10	247	Attornies may act as such.	209
17	” ” 16	0	Former provisions applicable.	209
18	6 Geo. 4, c. 16, s. 2	65	Traders, who are—who not.	210
19	” ” 3	67	Acts of Bankruptcy.	211
20	” ” 4	68	Conveyance in trust—how far Acts of B.	211
21	” ” 5	69	Lying in prison 21 days.	212
22	” ” 6	70	Filing Declaration of Insolvency.	213
23	” ” 7	0	Concerted Declaration.	214
24	” ” 8	71	Compounding with Petit. Cred.	214
25	” ” 9	66	M. P. Traders treated as others.	215
26	” ” 10	77	—— not paying, &c., on summons.	215
27	” ” 11	0	—— disobeying order of Court.	216
28	0	0	Stat. 52 G. 3, c. 114, extended hereto.	216
29	6 Geo. 4, c. 16, s. 12	0	Lord Chancellor to issue Commission.	217
30	” ” 13	0	Petit. Cred. Affidavit and Bond.	218
31	” ” 14	114	— sue forth at own expense.	219
32	” ” 15	91	— amount of debt.	220
33	” ” 16	97	Commissions, joint against partners.	220
34	” ” 17	98	— afterwards may be separate.	221
35	” ” 18	103	Petit. Creditor's debt, if insufficient.	221
36	” ” 19	0	Com. not invalid by prior Act of B.	222
37	” ” 24	101	Persons able to inform. The adjudication.	222
38	” ” 25	104	Surrender. Two sittings.	223
39	” ” 26	116	Abatement. Half fees.	224
40	” ” 27	109	Messenger may break open.	224
41	” ” 28	110	—— may seize goods in England.	224
42	” ” 29	106	—— may obtain search warrant.	225
43	” ” 30	111	—— how to execute in Scotland.	225
44	” ” 31	107	Acting under Com. Warrant, exempt.	226
45	” ” 32	108	Proof that a defendant is the Pet. Cr.	227
46	” ” 33	120	Suspected persons summoned.	227
47	” ” 34	122 260	Power to examine. Refusal & committal.	228

Irish Act. 6 Wm. 4, c. 14.	Corresponding Sections all English, save in two instances.	Eng. Consol. Act, 1849.	Subject matter.	Page.
Sections.		Sections.		
48	6 Geo. 4, c. 16, s. 35	250	Witness summoned—costs—expences.	229
49	” ” 36	117	Bankrupt may always be summoned.	230
50	” ” 37	118	—— wife—like.	231
51	” ” 38	274	Gaoler—penalty £500.	231
52	” ” 39	261	Warrant of committal—questions, &c.	232
53	” ” 40	0	Actions for false imprisonment.	233
54	” ” 44	159	Limit of actions—Gen. issue—costs.	233
55	” ” 45	0	Provis. Assig. appointment.	234
56	” ” 46	164	Proof of debts.	234
57	” ” 20	0	Extraordinary Commissions.	235
58	” ” 47	165	*Bona fide* creditors may prove.	236
59	” ” 48	168	Wages to servants and clerks.	236
60	” ” 49	170	Apprentices compensation.	237
61	” ” 50	171	Mutual debts—set off.	237
62	” ” 51	172	Proof of debts not payable at time of Act of B.	238
63	” ” 52	173	— by sureties.	238
64	” ” 53	174	— by obligees in Bottomry, &c.	239
65	” ” 54	175	— by annuitants.	240
66	” ” 55	176	— by sureties for annuity.	340
67	” ” 56	177	— by creditors on contingencies.	241
68	” ” 57	180	— by holders of bills, &c., interest.	242
69	” ” 58	181	— by Pl. for costs of judgment.	242
70	” ” 59	182	— creditors must elect before.	242
71	” ” 60	183	— Expunging. Costs.	243
72	” ” 61	139	Assignees, choice of, by creditors.	244
73	” ” 62	140	———— by joint creditors.	245
74	” ” 63	141	— Personal estate to vest in.	246
75	1 & 2 W. 4, c. 56, s. 25	0	— or in successor on death, &c.	247
76	6 Geo. 4, c. 16, s. 64	0	— real estate to vest in.	247
77	1 & 2 W. 4, c. 56, s. 26	0	— or in successor on death, &c.	248
78	” ” 27	0	— Certific. of appoint.—enrolled.	248
79	6 Geo. 4. c. 16, s. 65	0	Commissioner may sell.	249
80	” ” 66	0	Assignee, if removed—notice of.	249
81	” ” 67	157	— on death, &c., no abt. on suits.	249
82	” ” 68	209	Copyhold may be sold by Commission.	250
83	” ” 69	210	— vendees of, to comp. with lords.	250
84	” ” 70	149	Estates conditional redeemable.	251
85	” ” 71	127	— fraudulently extended.	251
86	” ” 72	125	Reputed ownership of goods.	252
87	” ” 73	0	Conveyances, during insolvency—void.	253
88	” ” 74	129	Distress not available beyond a year.	253
89	” ” 75	145	Bankrupt, when not liable for cov., &c.	253
90	” ” 76	146	Vendor may compel election by assig.	254
91	” ” 77	147	Assigs. may execute Banks. power.	255
92	” ” 78	148	Bankrupt to join in conveyance.	255
93	” ” 79	180	— if trustee, must transfer.	255
94	” ” 80	128	— beneficially entitled to stock, &c.	256
95	” ” 81	133	Notice, contracts without, when valid.	257
96	” ” 82	138	— *bona fide* payments without, valid.	258
97	” ” 83	0	— what is.	258
98	” ” 84	0	— money or goods paid or delivered without.	259
99	” ” 85	87	— to agent of Pub. Com. sufficient.	259

Irish Act. 6 Wm. 4, c. 14. Sections.	Corresponding Sections all English, save in two instances.	Eng. Consol Act. 1849. Sections.	Subject matter.	Page.
100	6 Geo. 4, c. 16, s. 86	134	Notice, *bona fide* purchases, even with; how valid	259
101	" " 87	131	Titles to property sold.	260
102	" " 88	158	Assignees may compound.	260
103	" " 89	152	——— may sue in name of firm.	261
104	" " 90	234	No proof of Trading, &c. in actions, unless notice.	262
105	" " 91	235	Like in suits in Equity.	263
106	" " 92	233	Depositions conclusive evidence.	263
107	" " 93	158	Defts. paying money into Court.	264
108	" " 94	155	—— Debts discharged thereby.	264
109	" " 95	0	Office for Registering.	265
110	2 & 3 W. 4, c. 114, s. 2	0	Custody of Records.	266
111	6 Geo. 4, c. 16, s 96	236	Commis. adjud. &c. recorded.	267
112	" " 97	236	Evidence—Office copies when.	268
113	2 & 3 W. 4, c. 114 & 7 5 & 6 Vic. c. 122, 25	242	——— in case of death of witnesses.	268
114	2 & 3 W. 4, c. 114, s. 9	236	——— proceedings signed, sealed, &c.	268
115	19 & 20 G. 3, c. 25, Ir., s. 4	0	——— where debts not over £20.	269
116	6 Geo. 4, c. 16, s. 98	138	No stamp or other duty.	269
117	" " 99	254	Perjury.	270
118	" " 100	275	Forfeitures—how applied.	271
119	" " 101	151	Assignees to keep books.	272
120	" " 102	0	Crs. may direct how monies kept, &c.	273
121	" " 103	186	Investing in Exchequer bills.	273
122	" " 104	265	Assignees not investing—20 per cent. penalty.	274
123	" " 105	156	Assignee a Bankrupt—Certificate.	274
124	" " 106	185	Audit after four months.	275
125	" " 107	187	The Dividend.	275
126	" " 108	184	Crs. having securities—no preference.	276
127	" " 109	188	Final dividend within eighteen months.	279
128	" " 110	0	Account of unclaimed div. to be filed.	279
129	" " 111	190	No action for dividends. Petition.	281
130	" " 112	251	Not surrendering. Felony.	281
131	" " 113	0	Lord Chancellor may enlarge time.	282
132	" " 114	194	Allowance for maintenance.	283
133	" " 115	161	Bankrupt apprehended under warrant.	283
134	" " 116	105	—— Books, &c. delivered on oath.	283
135	1 & 2 W. 4, c. 56, s. 85	150	—— may manage the estate.	284
136	6 Geo. 4, c. 16, s. 117	112 113	—— free from arrest during Exa.	285
137	" " 118	162	Commissioner may adjourn *sine die.*	285
138	" " 119	163	Bankrupt in cust.—expense of removal.	286
139	" " 120	0	Concealing effects. Penalty £100.	286
140	" " 121	200	The Certificate.	287
141	" " 122	0	———— to be signed by four-fifth Crs.	287
142	" " 124	0	———— proof of signature.	288
143	" " 125	202	Security to Crs.—when void.	289
144	" " 126	205	Freedom from arrest.—Certificate.	289
145	" " 127	0	Bankrupt second time—not paying 15s.	290
146	" " 128	195	Allowance to Bankrupt according to dividend.	290
147	" " 129	196	——— to Partner.	291
148	" " 130	201	Gaming, &c. no Certificate.	291

Irish Act. 6 Wm. 4, c. 14.	Corresponding Sections, all English, save in two instances.	Eng. Consol. Act, 1849	Subject matter.	Page.
Sections.		Sections.		
149	6 G. 4, c. 16, s. 131	204	Not liable on parol promise.	292
150	„ „ 132	197	Bankrupt to receive surplus, if any.	293
151	„ „ 133	230	Nine-tenths may compound.	293
152	„ „ 134	23	Voting thereon.	294
153	19 & 20 G. 3, c. 25, Ir. s. 6	0	Agents to Commissions. Oath.	295
154	„ „ 7	0	Messenger not to be Agent. Oath.	296
155	1 & 2 W. 4, c. 56, s. 33	245	Evidence, on oath or by affidavit.	297
156	„ „ 42	115	Concerted Bankruptcies.	297
157	„ „ 58	0	Fees, penalty for improperly taking.	298
158	0	0	Committal for interruption.	298
159	1 & 2 W. 4, c. 56, s. 59	0	Offences, how punished.	299
160	6 Geo. 4, c. 16, s. 135	0	Construction clause.	299
161	0	0	Commencement of Act.	300
162	0	0	May be altered or repealed.	300

* * *

TABULAR VIEWS

OF SUCH PORTIONS OF

ENGLISH BANKRUPT ACTS

AS HAVE BEEN MADE THE SUBJECT OF IRISH ENACTMENTS,

WITH REFERENCES THERETO.

TABLE III.

6 Geo. 4, c. 16,*

The page refers to the corresponding section of the Irish Act, and the sections of 6 *Geo.* 4, *will be found in the marginal column thereof.*

Eng. 6 G. 4, c. 16.	Corresponding Irish sections.	English Con. Act 1849.	Page.
Sections		Sections	
1	6 W. 4, c. 14, Ir., s. 1	0	197
2	,, 18	65	210
3	,, 19	67	211
4	,, 20	68	211
5	,, 21	69	212
6	,, 22	70	213
7	,, 23	0	214
8	,, 24	71	214
9	,, 25	66	215
10	,, 26	77	215
11	,, 27	0	216
12	,, 29	0	217
13	,, 30	0	218
14	,, 31	114	219
15	,, 32	91	220
16	,, 33	97	220
17	6 W. 4, c. 14, s. 34 12 & 13 V. c. 107, s. 85	98	221 158
18	6 W. 4, c. 14, s. 35	103	221
19	" 36	0	222
20	,, 57	0	222
21	,, 4	0	202
22	& 23 not in any Ir. Act.		
24	6 W. 4, c. 14, s. 37 12 & 13 V. c. 107 s. 82	101	222 155
25	6 W. 4, c. 14, s. 38	104	223
26	,, 39	116	224
27	,, 40	109	224
28	,, 41	110	224
29	,, 42	106	225
30	,, 43	111	225
31	,, 44	107	226
32	6 W. 4, c. 14, s. 45	108	227
33	,, 46	120	227
34	,, 47	122 260	228
35	,, 48	250	229
36	6 W. 4, c. 14, s. 49 12 & 13 V. c. 107, s. 48	117	230 128
37	6 W. 4, c. 14, s. 50	118	231
38	,, 51	274	231
39	,, 52	261	232
40	,, 53	0	233
41	to 43 not in any Ir. Act.		
44	6 W. 4, c. 14, s. 54	159	233
45	,, 55	0	234
46	,, 56	164	234
47	,, 58	165	233
48	,, 59	168	236
49	,, 60	170	237
50	,, 61	171	237
51	,, 62	172	238
52	,, 63	173	238
53	,, 64	174	239
54	,, 65	175	240
55	,, 66	176	240
56	,, 67	177	241
57	,, 68	180	242
58	,, 69	181	242
59	,, 70	182	242
60	,, 71	183	243
61	,, 72	139	244
62	,, 73	140	245
63	,, 74	141	246
64	,, 76	0	247
65	,, 79	0	249
66	,, 80	0	249
67	6 W. 4, c. 14, s. 81. 12 & 13 V. c. 107, s. 79	157	249 153
68	6 W. 4, c. 14, s. 82	209	250
69	,, 83	210	250
70	,, 84	140	251
71	,, 85	127	251

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* Although this Act was repealed by the Consol. Act, 1849, (see page 362, *ante.*) yet nearly all the sections were re-enacted therein.

Eng. 6 Geo. 4, c. 16.	Corresponding Irish sections.	English Con Act 1849.	Page.
Sections.			
72	6 W. 4, c. 14, s. 86	125	252
73	,, 87	0	253
74	,, 88	129	253
75	,, 89	145	253
76	,, 90	146	254
77	,, 91	147	255
78	,, 92	148	255
79	,, 93	130	255
80	,, 94	128	256
81	,, 95	133	257
82	,, 96	133	258
83	,, 97	0	258
84	,, 98	0	259
85	,, 99	87	259
86	,, 100	134	259
87	,, 101	131	260
88	,, 102	153	260
89	,, 103	152	261
90	,, 104	234	262
91	,, 105	235	263
92	,, 106	233	263
93	,, 107	158	264
94	,, 108	155	264
95	,, 109	0	265
96	,, 111	236	267
97	,, 112	236	268
98	,, 116	138	269
99	,, 117	254	270
100	,, 118	275	271
101	,, 119	151	272
102	,, 120	0	273
103	,, 121	186	273
104	,, 122	265	274
105	,, 123	156	274
Sections.			
106	6 W. 4, c. 14, s. 124	185	275
107	,, 125	187	275
108	,, 126	184	276
109	,, 127	188	279
110	,, 128	0	279
111	,, 129	190	281
112	,, 130	251	281
113	,, 131	0	282
114	,, 132	194	283
115	,, 133	161	283
116	,, 134	105	283
117	,, 136	150	285
118	,, 137	162	285
119	6 W. 4, c. 14, s 138 & 12&13 V. c. 107, s. 83	163	286 156
120	6 W. 4, c. 14, s. 139	0	286
121	,, 140	200	287
122	,, 141	0	287
123	0	0	0
124	,, 142	0	288
125	,, 143	202	289
126	,, 144	205	289
127	,, 145	0	290
128	,, 146	195	290
129	,, 147	196	291
130	,, 148	201	291
131	,, 149	204	292
132	,, 150	197	293
133	6 W. 4, c. 11, s. 151 & 12&13 V. c. 107, s. 86	230	293 159
134	6 W. 4, c. 14, s. 152 & 12&13 V. c. 107, s. 87	231	294 160
135	6 W. 4, c. 14, s. 160	0	299
136	0	0	0

TABLE IV.

1 & 2 *Wm.* 4, *c.* 56.

1 & 2 Wm. 4. c. 56.	Corresponding Irish sections.	English Con. Act 1849.	Page.
Sections.			
8	6 W. 4, c. 14, s. 4	0	202
10	,, 16	0	247
11	,, 14	0	208
16	,, 17	0	209
20	,, 38	104	223
23	12 & 13 V. c. 107, s. 31	40	111
25	6 W. 4, c. 14, ss. 74 75	0	247
26	,, 76 77	0	248
27	,, 78	0	248
32	12 & 13 V. c. 107, s. 114	0	185
Sections.			
35	6 W. 4, c. 14, s. 135	150	284
38	,, 155	245	297
39	,, 2	0	200
41	,, 160	0	299
42	,, 156	115	297
51	,, 6	0	203
56	,, 11	0	206
57	12 & 13 V. c. 107, s. 37	44	116
58	6 W. 4, c. 14, s. 157	0	298
59	,, 159	0	299
60	,, 6	0	203

TABLE V.

2 & 3 *Wm.* 4, *c.* 114.

2 & 3 Wm. 4, c. 114.	Corresponding Irish sections.	English Con. Act 1849.	Page.
Sections.			
2	6 W. 4, c. 14, s. 110	0	265
3	,, 109	0	265
7	,, 113	242	268
Sections.			
8	6 W. 4, 14, s. 111	236	267
9	,, 114	236	268

TABLE VI.

3 & 4 *Wm.* 4, *c.* 74.

The following sections have been, by their numerical figures, recited in 12 & 13 *V., c.* 106, *s.* 208, *Eng., and "shall extend and apply to proceedings in Bankruptcy," &c., "as fully and effectually" as if same were "re-enacted" therein.*

3 & 4 Wm. 4, c. 74.	Corresponding Irish sections.	English Con. Act 1849.	Page.
Sections.			
55	4 & 5 W. 4, c. 92, s. 48	208	309
56	,, 49	208	309
57	,, 50	208	309
58	,, 51	208	310
59	,, 52	208	310
60	,, 53	208	310
61	,, 54	208	310
62	,, 55	208	311
63	,, 56	208	311
Sections.			
64	4 & 5 W. 4, c. 14, s. 57	208	311
65	,, 58	208	312
67	,, 59	208	312
68	,, 60	208	313
69	,, 61	208	313
71	,, 63	208	313
72	,, 64	208	313
73	,, 65	208	314

TABLE VII.

5 & 6 Vic., c. 122, *Eng.*

5 & 6 V. c. 122.	Corresponding Irish sections.	English Con. Act 1849.	Page.
Sections.			
1	12 & 13 V. c. 107, s. 1	0	81
2	„ 2	1	82
3	„ 3	0	82
4	0	0	0
5	„ 4	99	83
6	„ 6	99 249	87
7	„ 7	89	88
8	0	0	0
9	„ 9	91	89
10	„ 10	65	90
11	„ 11	78	90
12	„ 12	79	92
13	„ 13	80	93
14	„ 14	81	94
15	„ 15	82	95
16	„ 16	83	96
17	„ 17	84	97
18	„ 18	85	98
19	„ 19	86	98
20	„ 20	72	100
21	„ 21	73	100
22	„ 22	70	101
23	0	0	0
24	„ 26	233	106
25	0	0	0
26	„ 27	158	108
27	„ 39	185	118
28	„ 40	168	118
29	„ 41	169	119
30	„ 42	106	120
31	„ 43	152	121
32	„ 44	251	122
33	„ 45	104	125
34	„ 46	252	126
35	„ 47	253	127
36	„ 53	255	133
37	„ 54	198 199 200 203 204 205 206 207	134
38	12 & 13 V. c. 107, s. 55	201	135
39	„ 56	198	136
40	„ 57	202	138
41	„ 58	270	138
42	„ 59	205	139
43	„ 60	204	140
44	„ 61	195	140
46	„ 62	196	142
46	0	0	0
47	0	0	0
48	12 & 13 V. c. 107, s. 28 30 34	38 39 40	109
49	„ 31	40	111
50	„ 32	42	112
51	0	0	0
52	0	0	0
53	12 & 13 V. c. 107, s. 33	43	112
54	„ 35	41	114
55	„ 36	189	115
56 to 66	not in any Ir. Act.		
67	12 & 13 V. c. 107, s. 69	243	146
68 69	not in any Irish Act.		
70	12 & 13 V. c. 107, s. 70	8	147
71 to 78	not in any Ir. Act.		
79	12 & 13 V. c. 107, s. 71	24	147
80	„ 72	121	148
81	„ 73	254	149
82	„ 74	275	149
83	„ 76		150
84 to 92	not in any Ir. Act.	87	
93	12 & 13 V. c. 107, s. 118	276	186
94	0	0	0

TABLE VIII.

Consolidation Act, 12 *&* 13 *Vic., c.* 106, *Eng.,* 1849.

12 & 13 V. c. 106 Eng.	Corresponding Irish sections.	Page.
Sections.		
1	12 & 13 Vic. c. 107, s. 2	82
2		
3	to 7 not in any Irish Act.	
8	12 & 13 Vic. c. 107, s. 70	147
9	to 15 not in any Irish Act.	
16	See 12 & 13 V. c. 107, s. 114	185
17	to 22 not in any Irish Act.	
23	6 W. 4, c. 14, s. 152	294
24	12 & 13 Vic. c. 107, s. 71	147
25	to 32 not in any Irish Act.	
33	See 12 & 13 V. c. 107, s. 76	150
34	to 37 not in any Irish Act.	
38	12 & 13 Vic. c. 107, s. 28	109
39	,, ,, 30	110
40	,, ,, 31	111
41	,, ,, 35	114
42	,, ,, 32	112
43	,, ,, 33	112
44	,, ,, 37	116
45	to 64 local matter, and not in any Irish Act.	
65	12 & 13 Vic. c. 107, s. 10 6 W. 4, c. 14, s. 18	90 210
66	,, ,, 25	215
67	,, ,, 19	211
68	,, ,, 20	211
69	,, ,, 21	212
70	6 W. 4, c. 14, c. 22 12 & 13 Vic. c. 107, s. 22	213 101
71	6 W. 4, c. 14, s. 24	214
72	12 & 13 Vic. c. 107, s. 20	100
73	,, ,, 21	100
74		
75		
76	12 & 13 Vic. c. 107, s. 23	102
77	6 W. 4, c. 14, s. 26	215
78	12 & 13 Vic. c. 107, s. 11	90
79	,, ,, 12	92
80	,, ,, 13	93
81	,, ,, 14	94
82	,, ,, 15	95
83	,, ,, 16	96
84	,, ,, 17	97
85	,, ,, 18	98
86	,, ,, 19	98
87	6 W. 4, c. 14, s. 99	259
88		
89	12 & 13 Vic. c. 107, ss. 7, 8	88,89
90		
91	12 & 13 V. c. 107. s. 9 6 W. 4, c. 14, s. 32	89 220
92	to 95 not in any Irish Act.	
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* * *

SECTIONS OF

6 WM. 4, C. 14, IRISH, GOVERNED BY SUBSEQUENT ENACTMENTS;

Principally by 12 & 13 Vic., c. 107, Ir.

The following are the leading sections in the above statute which appear to be either wholly or in part limited, extended, superseded or virtually repealed by other acts.—Difference of opinion will inevitably arise upon their reciprocal bearing, but as no decisions have yet been had in Ireland, and few, if any, can possibly be had to apply in the cases reported in England, it was thought advisable simply to refer to them, without hazarding an opinion upon their construction.

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THE END.

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